

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 UNITED STATES OF AMERICA, )

4 Plaintiff, )

5 v. )

6 PIROUZ SEDAGHATY, et al., )

7 Defendants. )

No. 05-60008-2-HO

Monday, May 10, 2010

Eugene, Oregon

8  
9 TRANSCRIPT OF EVIDENTIARY HEARING

10 BEFORE THE HONORABLE MICHAEL R. HOGAN

11 UNITED STATES DISTRICT COURT JUDGE

12  
13 -:-  
14  
15  
16  
17  
18  
19  
20  
21  
22

23 Deborah Wilhelm, CSR, RPR

Court Reporter

24 P.O. Box 1504

Eugene, OR 97440

25 (541) 431-4113

## APPEARANCES OF COUNSEL

## FOR THE PLAINTIFF:

CHRISTOPHER L. CARDANI  
United States Attorney's Office  
405 E. 8th Avenue, Suite 2400  
Eugene, OR 97401  
(541) 465-6771  
chris.cardani@usdoj.gov

CHARLES F. GORDER, JR.  
United States Attorney's Office  
1000 S.W. Third Avenue, Suite 600  
Portland, OR 97204-2902  
(503) 727-1021

## FOR THE DEFENDANT:

STEVEN T. WAX  
BERNARD J. CASEY  
MICHELLE SWEET  
Federal Public Defender  
101 S.W. Main Street, Suite 1700  
Portland, OR 97204  
(503) 326-2123  
steve\_wax@fd.org

1	<u>INDEX OF EXAMINATIONS</u>				
2	<u>FOR THE PLAINTIFF:</u>	<u>Direct</u>	<u>Cross</u>	<u>ReD</u>	<u>ReX</u>
3	Evan F. Kohlman	8	36	--	--
4					
5					
6	<u>FOR THE DEFENDANT:</u>	<u>Direct</u>	<u>Cross</u>	<u>ReD</u>	<u>ReX</u>
7	Walter Patrick Lang	91	128	--	--
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					

1 (Monday, May 10, 2010; 9:20 a.m.)

2 P R O C E E D I N G S

3 THE CLERK: Now is the time set for the matter  
4 of the *United States of America versus Pirouz Sedaghaty*,  
5 05-60008, time set for evidentiary hearing and hearing  
6 on pending motions.

7 THE COURT: Counsel, I'd like to take your  
8 experts first on the *Daubert* question. Or I have a  
9 couple of friends in Louisiana who say "Daw-bear," but  
10 we'll say "Daw-bert," I guess, since we're in Oregon.

11 On your direct of each other's witness, you may  
12 have one hour. Mr. Wax.

13 MR. WAX: May I introduce to you, Your Honor,  
14 the two people who are with me?

15 THE COURT: Of course.

16 MR. WAX: This is Bernie Casey, who is retired  
17 from Reed Smith in Washington. We met during the  
18 Guantanamo litigation. Bernie was managing partner  
19 there. They moved to San Francisco to open a branch,  
20 and moved to Portland a couple of years ago, and has  
21 been volunteering some time to help with this case given  
22 Mr. Matasar's inability to be here, and the help that  
23 he's provided on the *Daubert* issues, I asked him to come  
24 down. And hopefully it's okay with you that he sit at  
25 counsel table.

1 THE COURT: Welcome to Eugene.

2 MR. CASEY: Thank you, Your Honor. Good  
3 morning. Pleased to be here.

4 MR. WAX: And to his right is Michelle Sweet,  
5 whose name you will have seen on some of the pleadings.  
6 She's a research and writing attorney in the office who  
7 has provided some assistance on the evidentiary motions.

8 MS. SWEET: Good morning, Your Honor.

9 THE COURT: You are a prolific writer. Okay.

10 MR. CARDANI: Good morning, Judge. I'd like to  
11 introduce Mr. Gorder, Ms. Anderson, and Mr. Carroll.

12 THE COURT: Thank you.

13 MR. CARDANI: Mr. Kohlmann is here from New  
14 York. He's one of our experts subject to the "Daw-bear"  
15 motion. We have him here. The defense, I understand,  
16 has their expert Mr. Lang. And I don't know how the  
17 court wishes to proceed. But I think those are the two  
18 witnesses.

19 THE COURT: You have a choice of who goes  
20 first.

21 MR. WAX: I think the -- Mr. Kohlmann should go  
22 first, Your Honor.

23 THE COURT: All right. That's fine.

24 MR. CARDANI: Mr. Gorder will be handling the  
25 proceedings.

1 MR. GORDER: We'd be happy to do that, Your  
2 Honor.

3 MR. WAX: If we're doing introductions of  
4 everyone, Colonel Patrick Lang is present. And at some  
5 point I anticipate he will be called as well.

6 THE COURT: Fine.

7 MR. WAX: And we would have no objection to  
8 Mr. Kohlmann being here through Colonel Lang's testimony  
9 if the government doesn't object to Colonel Lang being  
10 here through Mr. Kohlmann's testimony.

11 MR. GORDER: We do not, Your Honor.

12 THE COURT: Thank you.

13 MR. GORDER: Your Honor, before I call  
14 Mr. Kohlmann, I know you've given us guidance of no more  
15 than an hour on direct, but I was just wondering if  
16 there was any other guidance that you could give us. We  
17 have briefed Mr. Kohlmann's qualifications. He's  
18 qualified, you know, in 15 different federal trials and  
19 a number of places around the world. He's here to  
20 testify about his qualifications.

21 THE COURT: You don't need to do that. If you  
22 have a CV you want to submit beyond what I have, you  
23 can, but other than that, no.

24 MR. GORDER: Your Honor, we do have -- and I  
25 submitted as Government's Exhibit 1 today -- his expert

1 report in this case, which was provided to the court  
2 last week, I believe.

3 THE COURT: Yes.

4 MR. GORDER: And we have submitted his résumé.  
5 It's attached to the motion -- or our response to the  
6 defendant's evidentiary motion, which is Document 344 in  
7 the court record.

8 THE COURT: Thank you. I will take the expert  
9 report as part of the direct.

10 MR. GORDER: Thank you. Your Honor, we would  
11 then call Mr. Kohlmann.

12 THE CLERK: Mr. Kohlmann, please raise your  
13 right hand.

14 (The witness was sworn.)

15 THE CLERK: Thank you. If you would please  
16 step forward. Please watch your step. We have some  
17 wires here.

18 THE WITNESS: Thank you very much.

19 THE CLERK: Your microphones are right along  
20 here. They are built in.

21 THE WITNESS: Thank you very much. Thank you,  
22 Your Honor.

23 THE CLERK: Sir, would you please state your  
24 full name, spelling your last name.

25 THE WITNESS: Yes. My name is Evan F.

1 Kohlmann, K-O-H-L-M-A-N-N.

2 THE CLERK: Thank you.

3 DIRECT EXAMINATION

4 BY MR. GORDER:

5 Q. Mr. Kohlmann, could you tell the court what you  
6 do for a living.

7 A. I'm an international terrorism consultant.

8 MR. GORDER: And, Your Honor, I want to just  
9 briefly run through --

10 THE COURT: You may.

11 MR. GORDER: -- his qualifications. And  
12 then --

13 THE COURT: It's your hour.

14 MR. GORDER: Okay. Thank you.

15 BY MR. GORDER:

16 Q. Mr. Kohlmann, could you tell us how you first  
17 got interested in the subject of international  
18 terrorism?

19 A. When I was an undergraduate student at the  
20 Edmund A. Walsh School of Foreign Service at Georgetown  
21 University in the late 1990s, I began an advanced study  
22 of particularly countries in which there were  
23 contemporary conflicts going on in the Muslim world.

24 One of the countries in particular that I was  
25 focused in on was Afghanistan, particularly examining



1 the Soviet/Afghan war of the 1980s, and the impact that  
2 that war had in terms of generating a new kind of  
3 transnational movement, a transnational movement that  
4 became known as the Arab Afghans.

5 The Arab Afghans were mujahideen fighters, holy  
6 warriors who came to Afghanistan from other countries  
7 during the 1980s to fight against the Soviets. However,  
8 a core of them stayed behind to continue fighting in  
9 Afghanistan, and then expanded to other countries,  
10 including Bosnia-Herzegovina, Chechnya, the Philippines,  
11 Somalia, and trying to trace the trajectories of these  
12 individuals, their histories, their financing, their  
13 communications, but, again, the idea of studying  
14 transnational conflict and transnational jihadi  
15 movements.

16 Q. Now, did you earn any awards at Georgetown in  
17 this area?

18 A. Yes. I was -- first of all, I was given the  
19 opportunity to write an undergraduate honors thesis at  
20 Georgetown University at the School of Foreign Service  
21 in international politics. A select number of students  
22 each year are given the opportunity to write a longer  
23 thesis paper. I applied to write the thesis. I was  
24 granted the opportunity. And my thesis was eventually  
25 approved. My thesis was on the subject of the legacy of

1 the Arab Afghans.

2 I also graduated with honors in international  
3 politics. I graduated magna cum laude. I think that's  
4 it.

5 Q. Now, while you were at Georgetown, did you  
6 learn anything about how scholars, academics,  
7 researchers conduct appropriate studies?

8 A. Yes. In order to write my honors thesis, there  
9 was a year long process. The first half of the year was  
10 just learning the proper research methods for social  
11 science research, for graduate level social science  
12 research. The primary focus was in the area of  
13 comparative analysis, which is the essential tool of  
14 social scientists, which is to take various different  
15 sources, to assess their credibility, their  
16 authenticity, and then to juxtapose them against each  
17 other to try to come up with a common narrative or  
18 shared narrative, an accepted narrative, based upon  
19 different sources that are deemed to be credible.

20 Now, a part of that is learning what is  
21 acceptable research. So the ideas of primary,  
22 secondary, and tertiary sources.

23 Q. Can you define that for us.

24 A. Sure, of course. A primary source would be if  
25 you actually went out and you particularly observed

1 something happening live, if you speak to someone  
2 directly, that's a primary source.

3 A secondary source would be -- at least in the  
4 terms of the research that I conduct -- would be if you  
5 obtained a video recording or an audio recording or  
6 communiqué, an authenticated communiqué, from a group.  
7 It's not as good as being in that place, but in many  
8 times when you are dealing with international terrorist  
9 organizations or extremist groups, it's not always  
10 feasible to get direct primary sources. However,  
11 secondary sources, particularly when they are video  
12 recordings, audio recordings, authenticated documents  
13 can be tremendously useful.

14 And then there are also tertiary sources.  
15 Generally speaking, I don't rely on tertiary sources,  
16 but I do use them in order to help educate my research.  
17 A tertiary source would be a magazine article, would be  
18 newspaper articles, would be the work of other academics  
19 and scholars. It's not something that I would want to  
20 base my own research off of, but in order to understand  
21 what other people are saying and how other people view  
22 these events and the other kind of research that's being  
23 developed by other scholars, it's important to also  
24 focus on the tertiary, at least for background purposes.

25 Q. Now, did you win any awards from the Center for

1 Muslim-Christian Understanding?

2 A. Yes. At Georgetown University in the School of  
3 Foreign Service, there is no direct minor program or  
4 alternative degree program. Instead of getting a  
5 secondary degree, what they offer is known as  
6 certificates. And there are four programs, or at least  
7 when I was there, there were four programs in which you  
8 could get a certificate.

9 One of the programs was a program in Islam and  
10 Muslim-Christian understanding, which was run by the  
11 Center, the Prince Alwaleed bin Talal -- Alwaleed is  
12 A-L-W-A-L-E-E-D, bin, B-I-N, Talal, T-A-L-A-L --  
13 Center for Muslim-Christian Understanding at Georgetown  
14 University.

15 In the Center, I studied under my mentor,  
16 Dr. John Voll, whom I'm still in contact with. I ended  
17 up writing a -- what's known as a capstone thesis in  
18 order to achieve a degree in Islam and Muslim-Christian  
19 understanding. My capstone thesis was on the subject of  
20 religious and political modernization in early twentieth  
21 century Afghanistan.

22 And, of course, I then achieved a degree, a  
23 second degree in Islam and Muslim-Christian  
24 understanding.

25 Q. Now, after you graduated from Georgetown, did

1 you get any other degrees?

2 A. Yes. Subsequent to my degree at Georgetown or  
3 my degrees at Georgetown, I achieved a JD or a juris  
4 doctorate from the University of Pennsylvania Law School  
5 in Philadelphia, Pennsylvania.

6 Q. Have you practiced law since you graduated?

7 A. No, I have not.

8 Q. Okay. Still on the international terrorism  
9 arena?

10 A. Yes. The focus of my studies at the University  
11 of Pennsylvania was not on corporate law or being a  
12 lawyer. The focus was on international security and  
13 security law. I also took classes separately in the  
14 school -- the graduate school of arts and sciences at  
15 the University of Pennsylvania in Afghanistan and  
16 Islamism, democracy and terrorism. In other words, the  
17 focus of my study was national security studies,  
18 terrorism, and the laws that govern over these areas.

19 Q. Did you begin working at some point for a think  
20 tank called The Investigative Project?

21 A. Yes.

22 Q. What is that and what did you do for them?

23 A. The Investigative Project is a counter-  
24 terrorism think tank and watchdog group that was started  
25 in 1995 by a former CNN journalist. I began working

1 there in 1998 as an intern. I began when I was at  
2 Georgetown. I had a tremendous interest obviously in  
3 these areas. I wanted to do original research. This  
4 think tank gave me that opportunity. By the time I left  
5 there, I was a senior analyst or senior investigator. I  
6 worked there from approximately 1998 until December of  
7 2003.

8 Q. And what did you do for The Investigative  
9 Project?

10 A. As part of my responsibilities at The  
11 Investigative Project, I was tasked with discovering,  
12 researching, analyzing the communications, financing,  
13 recruitment strategies, propaganda, and other aspects of  
14 prominent international terrorist organizations.

15 My primary focus was on al-Qaeda and al-Qaeda-  
16 like groups. However, another major focus of mine was  
17 actual regional conflicts in which Arab Afghan fighters  
18 had been involved, particularly in places like  
19 Bosnia-Herzegovina and the Caucasus.

20 Q. And when you say the Caucasus, where is that?

21 A. Chechnya. For instance, in 19 -- in -- excuse  
22 me, in early 2000 as part of my duties at The  
23 Investigative Project, I identified a video recording  
24 that had been produced by mujahideen in the Caucasus  
25 known as Russian Hell in the Year 2000.

1           So I acquired this video recording. I brought  
2   it into The Investigative Project. I analyzed it. I  
3   broke it down into pieces. I identified the players.  
4   And I provided that information to other people at the  
5   think tank, and then that information is then given on  
6   to academics, policy makers, and others with an interest  
7   or responsibility in this field.

8       Q.     With regard to -- you mentioned primary  
9   sources. Have you ever had the opportunity to interview  
10  someone that most of us would consider a terrorist?

11     A.     Yes. I've interviewed several individuals who  
12  have been convicted of terrorist offenses in the United  
13  Kingdom and the United States. I've interviewed  
14  individuals who have been on frontline battlefields,  
15  namely in Bosnia-Herzegovina, the Caucasus and  
16  elsewhere. I've -- yeah, I mean, I've interviewed a  
17  number -- and we continue to do so.

18           As much as possible I try to conduct these  
19  interviews personally. Sometimes we have to do it  
20  through intermediaries.

21     Q.     And when you say "intermediaries," how would  
22  that work?

23     A.     Well, for instance, if we want to interview  
24  someone from the Pakistani Taliban, it's exceptionally  
25  difficult for me to try to get into Waziristan and meet

1 someone directly from the Pakistani Taliban. But we can  
2 get stringers, people that work for us to go there, feed  
3 them questions. They can go and ask the questions that  
4 we want asked, video record the interview, and bring  
5 back the video for us.

6 But as frequently as possible, I try to conduct  
7 these interviews personally.

8 Q. Do you -- well, what languages do you speak?

9 A. I speak English, French, and some broken  
10 Arabic.

11 Q. So if the person doesn't speak English or  
12 French, how do you conduct these interviews?

13 A. Either in broken Arabic or through a  
14 translator. I have my -- I have a research assistant  
15 who is a Jordanian national -- or, actually, he's about  
16 to become a U.S. national, but he's originally from  
17 Jordan, and he's a native Arabic speaker. We also  
18 employ people in my company who speak -- who are native  
19 speakers of Urdu, Pashto, Turkish, and we also have  
20 another individual who's a secondary speaker of Russian.

21 Q. Now, where do you do most of your research?  
22 Where does most of your research come from?

23 A. We do a combination of materials. A lot of the  
24 research that we get we try to get directly from the  
25 organizations themselves. In other words, one of the



1 reasons that we began doing this work was we felt that a  
2 lot of the empirical research that was being conducted  
3 on these organizations was being obtained through  
4 non-authentic sources. And we felt that there was a  
5 tremendous amount of information that could be obtained  
6 directly from the organizations, in other words,  
7 directly from terrorist organizations, mujahideen  
8 organizations, extremist organizations. The point is is  
9 that these folks were putting out a lot of material,  
10 video recordings, audio recordings, communiqués,  
11 magazines. And this original material offered a  
12 tremendous perspective inside these groups. And offered  
13 quite a bit of information that maybe these groups  
14 didn't realize that they were giving out for free, but  
15 which was very educational for those of us outside of  
16 the conflict zones, outside of Chechnya, outside of  
17 Afghanistan.

18           This material comes through different ways.  
19 Some of the material we obtained through clearinghouses  
20 in Europe and Pakistan and elsewhere. For instance, I  
21 just described this video recording Russian Hell in the  
22 year 2000 from the Caucasus. I obtained this by  
23 contacting a jihadi clearinghouse based in the United  
24 Kingdom. I ordered it on CD. And they mailed it  
25 literally in the mail to us.

1           Other cases, I've gone to locations in the UK  
2           and I've purchased things directly. Very frequently  
3           nowadays, because of the fact of law enforcement  
4           crackdown on individuals that are trying to purvey  
5           propaganda put out by terrorist organizations,  
6           frequently we go to the Internet. The Internet has  
7           become the new venue for these groups to release their  
8           material.

9           And what's also interesting is that these  
10          groups are also releasing archival material, in other  
11          words they're not just releasing material relevant to  
12          what's going on today, but they're also releasing  
13          material that has to do with conflicts that took place  
14          10, 20 years ago. And this is the first time we're  
15          actually seeing this video footage, these audio  
16          recordings, these communiqués, these magazines. And  
17          they are tremendously helpful, obviously, to educate  
18          yourself.

19          Q.       How do you keep track of all this stuff?

20          A.       Well, we maintain a database, a formal  
21          database, which contains at this point several billion  
22          documents. It is organized in a system where everything  
23          is organized by region, by group, by year. We have a  
24          specific dating format so every file will be saved,  
25          saved digitally where immediately by looking at the file

1 name, I can tell you the date it was saved, the source  
2 where it was -- where it comes from, the rough content.  
3 If it comes from a discussion forum, even the unique  
4 thread number assigned to that message. All that  
5 material is then organized and is archived.

6 And we have software known as ISYS, I-S-Y-S,  
7 and another software package known as dtSearch, along  
8 with a Mac Spotlight server, which enable us to do what  
9 are known as Boolean searches through this material. A  
10 Boolean search would be a LexisNexis style search,  
11 "and," "if," "or," "nor." So we can literally run  
12 searches through the content of what we have. So if  
13 we're looking for a name, a phone number, an address, a  
14 bank account number, we can get that level of  
15 specificity.

16 Q. Now, you might want to spell Boolean for the  
17 court reporter.

18 A. Excuse me, Boolean, B-O-O-L-E-A-N.

19 Q. Now, what do you generally do with this  
20 material that you gather?

21 A. We do a number of different things. We --  
22 first of all, I work for NBC News. I work as an analyst  
23 for NBC News. So one of the things we do is we develop  
24 stories for media. We develop investigative news pieces  
25 which examine international terrorist organizations,

1 their recruitment, their financing, their  
2 communications.

3 I also take that material and I produce  
4 scholarly papers with it. Currently I'm finishing work  
5 on a paper for a journal known as *African Security* on --  
6 in fact, the title of the paper is the "Sacralization of  
7 the Somali Conflict," which is based upon the research  
8 and what we've developed. And I'm writing it in  
9 conjunction with a graduate -- or actually at this point  
10 a professor of Harvard University and another professor  
11 from the United Kingdom.

12 We also take this material and we provide it to  
13 government agencies. We work with both the U.S.  
14 government, we work with the -- the government of the  
15 United Kingdom. We work with Australian Federal Police.  
16 The PET, the Danish police intelligence service. We've  
17 worked with law enforcement and governments around the  
18 world. We also work with the United Nations. We work  
19 with governments in the Middle East in order to, number  
20 one, help provide the raw data that helps educate people  
21 about what these groups are doing.

22 We also participate in the counter-  
23 radicalization programs. Recently I was over in Amman,  
24 Jordan, at a conference speaking with representatives  
25 from the Saudi Interior Ministry and the Jordanian royal

1 family about how -- the best strategies for counter-  
2 radicalization given what's going on in the world today.

3 Q. Now, you mentioned publishing a paper.  
4 Approximately how many papers have you published?

5 A. Quite a few. I mean, I try to publish at least  
6 one to two scholarly papers per year. And then in  
7 addition to that, I also publish various other different  
8 articles.

9 This past February, I published a piece in the  
10 West Point Counterterrorism Center Sentinel Journal on  
11 the subject of a particular Web site which is being  
12 using for recruitment by the Pakistani Taliban and other  
13 organizations.

14 So it's a variety. Sometimes we submit op-eds  
15 for major newspapers. But we try to do -- you know, we  
16 try to hit different kinds of sources, but there is  
17 numerous papers each year, yeah.

18 Q. Now, have you written any books on -- you know,  
19 on this general subject?

20 A. Yes. In 2004, I published my first book, which  
21 was *Al-Qaida's Jihad in Europe: The Afghan-Bosnian*  
22 *Network*, which was published by Berg/Oxford Press in the  
23 United Kingdom.

24 Q. And could you explain to the court what kind of  
25 review or editing process you had to go through to

1 publish the book.

2 A. Sure. Oxford as an academic publisher. It  
3 publishes mostly university style books. So in order --  
4 first of all, because of the fact that it's a British  
5 publisher, so it's subject to British libel law, and  
6 it's an academic publisher, I had to go through the  
7 formal process of peer review.

8 Now, the -- that process is not -- was not in  
9 my control. In other words, what the publisher did was  
10 the publisher identified a group of academics or  
11 scholars that it trusted, and it sent them out this --  
12 sent them out my draft blind. In other words, I didn't  
13 know who they were. I didn't know what they were  
14 reviewing. And they were asked to review my draft. Go  
15 through it and assess whether or not it met the  
16 credentials for academic scholarship, and whether or not  
17 it was something worthy of publication.

18 Obviously, if my peer reviewers had come back  
19 and said that it wasn't worthy of publication, it  
20 wouldn't have been published. But in addition to that,  
21 because of the fact that the book was published in the  
22 United Kingdom and is subject to British libel law, it  
23 was also subject to an extremely high standard. In  
24 other words, every single fact that I put in the book  
25 was rigorously checked, not just by my peer reviewers,

1 but by a libel attorney hired by my publisher.

2 Q. Have you gotten any feedback on the book since  
3 it was published?

4 A. Yes. I mean it's -- it was -- has been  
5 recommended by people such as Richard Clarke, the former  
6 White House counterterrorism czar. It's used as a  
7 course text in universities such as Harvard, Johns  
8 Hopkins, all over the place. Australia, the United  
9 Kingdom, all over the place. It's one of the very few  
10 books that deals with a particular period of time that  
11 the Arab Afghans were engaged. And while that period  
12 may not be so interesting for media or for public  
13 consumption, in academic circles and in university  
14 circles it's very relevant for a lot of the scholars.

15 Q. I take it it didn't make the *New York Times*  
16 best-seller list?

17 A. Yeah, again, it's not -- it's certainly not a  
18 book for public consumption. It's very in-depth. It's  
19 very detailed. I mean I have an entire chapter just on  
20 the use of charitable organizations to fund conflicts.  
21 It's not the kind of thing that most people would find  
22 as bedtime reading. But it is something, again, for  
23 scholars and for people that are engaged in very  
24 detailed research that are looking for facts, it goes  
25 into great fact. And eventually it was actually

1 republished by the George Marshall Center in several  
2 different languages.

3 Q. Now, with regard to the -- I guess the  
4 scholarly journals that you say you try to publish once  
5 or twice a year, what kind of peer review do your  
6 articles go through in those instances?

7 A. Sure. Well, there is formal and there is  
8 informal peer review. I -- anything I publish, anything  
9 I write, one of the first things I'll do is submit it to  
10 a whole host of different people who I know and I  
11 respect and who have in-depth and lengthy knowledge in  
12 this. People such as Bruce Riedel, one of the guys that  
13 was in charge of the Barack Obama administration review  
14 of Afghanistan policy, et cetera, et cetera. I pass  
15 them to a large variety of different people. And I try  
16 to get feedback initially.

17 Then after that, when I submit it to the  
18 journal, the paper is then reviewed by editors of the  
19 journal, and they decide whether or not it fits their  
20 standards for publication.

21 I've never had a piece rejected, so I'm  
22 assuming that so far they've been on target.

23 Q. Now, did you start a company or a business  
24 called globalterrorist.com?

25 A. Global Terror Alert, yes. That was the former



1 name of my business until recently. I've expanded now  
2 with other partners to Flashpoint Global Partners.

3 Q. And generally what kind of a business has that  
4 been?

5 A. Global Terror Alert was essentially designed as  
6 a clearinghouse for international terrorism. In other  
7 words, it was a place for scholars, academics, policy  
8 makers, journalists, students to come and actually get  
9 an eye into the raw data that underlies the world of  
10 terrorism and terrorist organizations.

11 One of the issues that I had when I was  
12 researching my thesis, was it was exceptionally  
13 difficult for me to find good sources. It took a lot of  
14 digging. And I thought it would be good for others to  
15 be able to provide that information out there, so that  
16 others when they are pursuing these same lines as I was,  
17 they would be able to see kind of the authenticated  
18 credible information coming out from these groups, so  
19 there would be less confusion about the facts.

20 Also, obviously, it was, you know, partially a  
21 pro bono venture, but, obviously, part of it was for  
22 profit. As part of Global Terror Alert, that was the  
23 venue through which I did consulting work for the U.S.  
24 Justice Department, for the FBI, and for other  
25 organizations.

1 Q. Now, you've also done work for an organization  
2 called the 9/11 Finding Answers Foundation?

3 A. That's correct, the NEFA Foundation, yes.

4 Q. And just generally what is that?

5 A. Sure. NEFA was started after the September  
6 11th terrorist attack in order to help promote nonprofit  
7 counterterrorism research. It's -- again, it's a  
8 nonprofit organization. The idea behind the group is  
9 very similar to what The Investigative Project was  
10 about, a nonprofit counterterrorism research, a  
11 counterterrorism watchdog. I've worked for them as an  
12 investigator and as a contributor since, I think, 2005,  
13 I think 2005. And I continue to work for them, again as  
14 an investigator, as a contributor.

15 Q. Now, you have testified as an expert witness  
16 for the United States in a number of criminal trials; is  
17 that correct?

18 A. That's correct, yes.

19 Q. And in those cases, have you prepared an expert  
20 report, so to speak?

21 A. In all but I think two of them, yes.

22 Q. And you've prepared one in this case; is that  
23 right?

24 A. That's correct, yes.

25 Q. Could you tell the court what kind of process

1 you go through in preparing an expert report, including  
2 in this case?

3 A. Well, the first thing I would do is determine  
4 what the expert report is supposed to be about. What is  
5 the general subject that I've been asked to write about.  
6 Then I would go back, number one, and go into the  
7 section of my database that deals with material from  
8 that particular issue. And I start going through piece  
9 by piece attempting to match up material that I  
10 recognize or I remember or I recall, that matches up and  
11 helps address the issue that I've been asked to write a  
12 report about.

13 Additionally, I then run searches through my  
14 database, because I can't possibly remember billions of  
15 documents off the top of my head, so I run Boolean  
16 searches. So I search for key words. I search for  
17 things. And I see whether or not there is anything I  
18 don't recall personally, but I did save, and I have  
19 copies of in the database, that would be relevant to  
20 this.

21 I also then conduct other searches. Perhaps I  
22 haven't saved the correct material. Perhaps I haven't  
23 saved the relevant material. Perhaps that material is  
24 available on the Internet. Perhaps that material is  
25 available via LexisNexis. Perhaps that material is

1 available via the Foreign Broadcast Information Service,  
2 which is a U.S. government agency which republishes  
3 foreign media in English. Maybe there is a source  
4 available in a foreign country.

5 The point is then to try to go out and see  
6 whether or not there are any additional sources which  
7 can help educate this question which I don't already  
8 have in my database.

9 At that point I take these various different  
10 sources, and I conduct, again, comparative analysis. I  
11 attempt to determine among these sources which are the  
12 most credible, which offer the greatest degree of  
13 insight and information to the question I've been asked  
14 to write about, and I write a report based on that.  
15 Obviously footnoted with all the sources listed.

16 And because of the fact that I deal solely in  
17 open source information, in other words, information  
18 that is not obtained through intelligence agencies,  
19 information that is not obtained through, you know,  
20 subterfuge, the information I have is open. It's  
21 public. I can provide my sources, not just the  
22 footnotes, but I can provide copies of my sources.

23 Q. And I take it you did that in this case?

24 A. That's correct, yes.

25 Q. Now, without getting into the substance of your

1 testimony, could you explain to the court what your  
2 background is in the conflict in Chechnya that would  
3 allow you to provide the jury with some specialized  
4 knowledge in that area?

5 A. The conflict in the Caucasus has been one of  
6 the primary focuses of my research since I began this,  
7 began this endeavor. When I wrote my honors thesis at  
8 Georgetown University in 2001, I did a comparative  
9 analysis of four different regions where Arab Afghan  
10 fighters had gone to and had participated in battles and  
11 what the impact had been.

12 One of those regions, one of the four regions I  
13 chose was Chechnya, was the Caucasus. The reason that I  
14 was very interested in this, and the reason why I chose  
15 this was because I had developed an incredible amount of  
16 information, incredible amount of original sources which  
17 helped educate as to what was going in the Caucasus, the  
18 hierarchy of the foreign fighters, the identity of the  
19 foreign fighters, their communication, their financing.

20 The critical aspects that everyone wanted  
21 answers about, and it happened that this particular  
22 conflict we were developing excellent sources with the  
23 answers to those questions. In fact, initially my  
24 intention had been to follow up my book on Bosnia with a  
25 book about Chechnya and about the Arab Afghans in the

1   Caucasus. Unfortunately, not too many publishers are  
2   interested in publishing books about Chechnya. But  
3   that's the nature of my interest and my expertise.

4       Q.       Now, how about in the subject matter of the  
5   role of Islamic charities in financing what some of us  
6   would call terrorist activity?

7       A.       Sure. That has also been a major focus of my  
8   studies ever since I began this endeavor. First of all,  
9   one of the chapters of my book is exclusively about the  
10  role of the Islamic charitable organizations in funding  
11  jihad or funding mujahideen groups. It's an entire  
12  chapter of my book.

13               I've also coauthored testimony, Congressional  
14  testimony, on the use of charitable -- Islamic  
15  charitable organizations in the Arabian Gulf to finance  
16  international terrorist organizations. I've written  
17  numerous papers about this. I just -- I submitted a  
18  paper -- there is a paper that I published in -- with  
19  the Danish Institute of International Studies about two  
20  years ago which has been cited in the U.S. Treasury  
21  Department guidelines for charitable organizations in  
22  terms of avoiding terror finance issues.

23               So I publish fairly regularly on this issue. I  
24  conduct original research. At this very moment we're  
25  actually engaged in a project which is attempting to

1 identify bank account numbers and other financial  
2 instruments which are being used at the very moment by  
3 terrorist organizations to receive financing to finance  
4 operations.

5 Q. What about your background in studying  
6 particular Web sites used in connection with terrorist  
7 activity?

8 A. Yeah. Maybe it's no surprise given my age, but  
9 one of the areas where I've focused in on quite a bit is  
10 the use of Web sites and the Internet to disseminate  
11 information by terrorist organizations. In some ways  
12 you could say that I have a bit of a niche in this area.  
13 And I have conducted investigations of Web sites that  
14 have been hosted by terrorist organizations, or been  
15 promoting terrorist organizations since 1997.

16 I've written numerous papers, numerous academic  
17 papers about this subject. I have published -- in the  
18 last two years, I've published papers on this subject in  
19 the Annals of the American Academy of Social and  
20 Political Sciences, in the West Point Counterterrorism  
21 Center Sentinel Journal, and various other different  
22 venues.

23 I've testified about this area in many, many  
24 different courts. And, obviously, it's a major, major  
25 focus of what I do.

1 I attempt to save copies of the Web sites. I  
2 attempt to authenticate where the material is coming  
3 from. I attempt to meet the people who are running the  
4 Web sites. But, yeah, that's -- again, it's -- because  
5 of the fact increasingly that terrorist organizations  
6 are taking to the Internet as their primary mechanism to  
7 disseminate propaganda, in open source information, it's  
8 becoming ever increasingly a more important aspect of  
9 this.

10 Q. Would that include the Web sites Azzam.com and  
11 Qoqaz.net?

12 A. Yes. Between the years of approximately 1998  
13 and 2002, I visited the Web sites of Azzam Publications  
14 and Qoqaz.net on not just a daily basis but actually  
15 multiple times a day, particularly during the point in  
16 which the conflict in the Caucasus and Chechnya had  
17 reached its peak in late 1999 and early 2000.

18 At that point in time, really one of the best  
19 places to get updates on jihad action or what the  
20 mujahideen were up to in the Caucasus was from Qoqaz.net  
21 and Azzam Publications. They were publishing material  
22 almost everyday. It was -- if you were interested in  
23 jihad, if you were interested in mujahideen, this is  
24 where you went to, period.

25 Q. When you say "jihad," what do you mean by that?



1       A.       Well, jihad is an Arabic word which means holy  
2 struggle. It can be a spiritual struggle. It can mean  
3 an internal struggle. However, in the contemporary  
4 context because of events that have taken place in the  
5 last 10, 15 years, increasingly jihad has become  
6 associated with a particular meaning, which is the  
7 meaning -- the violent meaning. In other words, holy  
8 struggle as in violent struggle, physical struggle, not  
9 internal struggle.

10               There are some who still refer to jihad when  
11 talking about internal struggle, but it's becoming less  
12 and less used because of the fact that it has this  
13 immediate connotation when you say it, not just in the  
14 West but also in the Muslim world as well.

15       Q.       Now, have you also done a lot of research in  
16 terrorist financing?

17       A.       Yeah. Again, not just with Islamic charitable  
18 organizations but many different mechanisms for  
19 terrorist financing; everything from basic money  
20 laundering, the use of Hawala networks, the use of  
21 Western Union, et cetera, et cetera. But, yeah, I mean,  
22 Islamic charitable networks have been a large part of  
23 investigating terror financing. But it is part of it,  
24 there is other aspects as well.

25       Q.       Now, with reference to al-Haramain, have you

1 done any work studying that organization from Saudi  
2 Arabia?

3 A. Yes, I have.

4 Q. Could you just briefly tell us what kind of  
5 research you've done in that area.

6 A. al-Haramain has been a large focus of my  
7 studies of Islamic charitable organizations in the  
8 Arabian Peninsula, particularly vis-à-vis al-Haramain's  
9 activities in Bosnia-Herzegovina and in the Caucasus.

10 I have worked directly -- I was -- I was hired  
11 to work directly with the office of a high  
12 representative in Bosnia-Herzegovina, among other  
13 things, to work, in terms of researching, developing  
14 information about al-Haramain and associated Islamic  
15 charities, their activities in the local regions,  
16 reviewing original documents produced by the security  
17 service of the army of Bosnia-Herzegovina, the Muslim  
18 army of Bosnia-Herzegovina, regarding the activities of  
19 al-Haramain, their support of mujahideen, et cetera.  
20 And expanding that from Bosnia-Herzegovina to the  
21 Caucasus later on. Because once the conflict in the --  
22 once the conflict in Bosnia-Herzegovina ended,  
23 al-Haramain's activities then briefly moved to Albany  
24 and then to the Caucasus. So tracing the patterns of  
25 their behavior.

1 But, again, al-Haramain was part of my book.  
2 It's part of my -- the Congressional testimony I  
3 coauthored. It's a very frequent subject of material  
4 that I've written about. I've written numerous articles  
5 about al-Haramain, and I've conducted a tremendous  
6 amount of research on al-Haramain's activities on the  
7 ground in Bosnia-Herzegovina.

8 MR. GORDER: Can I have a moment, Your Honor?

9 THE COURT: Yes.

10 (Discussion held off the record between  
11 co-counsel.)

12 MR. GORDER: Your Honor, as far as  
13 Mr. Kohlmann's qualifications, we're prepared to submit  
14 him as an expert. If you want to hear further about the  
15 specific testimony that he would offer during the trial,  
16 I don't know if you want to rerun the trial, but those  
17 are the areas that he is going to be speaking of.

18 THE COURT: I don't want to rerun the trial.

19 MR. GORDER: Very well. Then we would tender  
20 him as an expert.

21 THE COURT: Thank you. Who is taking the  
22 cross?

23 MR. WAX: Thank you, Judge. Good morning,  
24 Mr. Kohlmann.

25 THE WITNESS: Good morning.

1 THE COURT: Mr. Wax, up to one hour.

2 MR. WAX: I'll do my best.

3 THE COURT: I'll help you.

4 CROSS-EXAMINATION

5 BY MR. WAX:

6 Q. You've been through this drill a number of  
7 times, have you not?

8 A. That's correct, yes.

9 Q. I would like to start by asking you to tell us  
10 if you have read the indictment in this case?

11 A. If I have read the indictment, it's been a  
12 while. I assume I probably have read it at some point  
13 or another, yeah.

14 Q. Do you recall what the charges in this case  
15 are?

16 A. I -- you know, frankly, I don't. I don't  
17 generally study the legal documents or I try to avoid  
18 studying legal documents in cases in which I'm involved  
19 with because I don't perceive it to be advantageous  
20 towards my testimony.

21 Q. Do you have any sense, then, of what the issues  
22 are that the jury is going to be required to consider  
23 under the indictment in this case?

24 A. I have a basic sense. But, again, I try to  
25 avoid studying those issues because they're not relevant

1 to my testimony and I seek to avoid prejudicing my  
2 testimony.

3 Q. Your judgment is that the issues in this case  
4 are not relevant to your testimony?

5 A. No, I --

6 MR. GORDER: Objection, Your Honor.

7 THE COURT: Sustained.

8 THE WITNESS: My response --

9 THE COURT: No. That's all right. Ask another  
10 question.

11 THE WITNESS: Excuse me, Your Honor.

12 BY MR. WAX:

13 Q. What material were you given to review here?

14 A. Well, I was given a substantial amount of  
15 material to review. I was given material -- computer  
16 exhibits that were I understand to have been recovered  
17 off of computers seized from the defendants in this  
18 case. I was given documents which were provided by the  
19 government of Russia. I was provided -- I think that's  
20 almost everything.

21 Q. How many computer exhibits were you provided?

22 A. Off the top of my head, I'm not sure. I could  
23 give you a list if you like. I have everything saved in  
24 my database.

25 Q. Do you have that list with you here today?

1 A. No, I don't.

2 Q. Do you recall whether it was the roughly 8 or  
3 10 or so that are referenced in your report or were  
4 there more than that?

5 A. I believe that -- those were the ones that I  
6 was given. Although there may have been several --  
7 there may have been other computer exhibits that I was  
8 given that simply weren't relevant to my expert report  
9 in the sense that they were either redundant or they  
10 didn't have any direct bearing on what I was writing  
11 about. But, again, I -- if you would like, I'm sure I  
12 could provide you with copies of everything that was  
13 provided to me.

14 Q. Do you recall how many pages of material from  
15 the Russian FSB you were provided?

16 A. Not very many. I think approximately five or  
17 six pages.

18 Q. Were you provided a copy of Colonel Lang's  
19 report on the FSB?

20 A. I was provided a copy of a report by Colonel  
21 Lang but I have not read it yet. But I don't know if it  
22 was a report on the FSB or not. It was a report by  
23 Colonel Lang.

24 Q. With respect to your qualifications, I want to  
25 ask you just a few questions. You said, if I understood

1 you correctly, that in law school your focus was on  
2 security law and international security.

3 A. Roughly, yes, exactly. Terrorism,  
4 international security, national security law.

5 Q. Okay. Do you recall having offered such  
6 testimony in a prior proceeding and having the attorney  
7 go through with you your actual law school transcript?

8 A. Yeah, I believe I did so in the *Muntasser* case  
9 up in Boston.

10 Q. And do you recall as you sit here today either  
11 from that examination or from your recollection of your  
12 law school degree precisely what courses you took in law  
13 school?

14 A. You mean every single last one? No, I'm sorry,  
15 I don't recall. It's been -- I graduated from law  
16 school about six years ago. But I can tell you some of  
17 the titles of the classes I took. Diplomacy in  
18 terrorism, Afghanistan and Islamism. There are several  
19 others, but I can't remember the course titles.

20 Q. Let me see if this refreshes your recollection.  
21 In your first year in law school do you recall taking  
22 the standard first year course of civil procedure,  
23 contracts, torts, property, and legal writing?

24 A. Yes.

25 Q. And in the second semester, constitutional law,

1 criminal law, legal writing, American legal history, and  
2 administrative law?

3 A. Correct, yes.

4 Q. Are there any other courses that you took  
5 during your first year in law school?

6 A. No. The first year is fairly standard, I  
7 believe.

8 Q. In your second year, do you recall having taken  
9 professional responsibility, evidence for trial lawyers,  
10 federal income tax, constitutional criminal procedure,  
11 terrorism and democracy in the first semester?

12 A. That's correct, yes.

13 Q. So that's one course so far related to the  
14 subject matter?

15 A. Constitutional criminal law had direct bearing  
16 on terrorism law.

17 Q. Was it not the standard constitutional criminal  
18 law course taught at Penn?

19 A. I don't know what the standard  
20 constitutional -- each constitutional criminal law  
21 course is different depending on the professor that's  
22 teaching it. There is modification -- I mean, it's  
23 not -- I don't think there's a standard course.

24 I certainly know there were other people who  
25 took that course that didn't go through the exact same



1 text that I did. But I don't -- again, there was --  
2 when I say I took classes on national security on  
3 international terrorism and security, I'm also referring  
4 to elements of criminal law. To understand about  
5 international terrorism, you have to understand the  
6 basis for constitutional criminal law and basic criminal  
7 law.

8 Q. Sir, I've taught constitutional criminal law  
9 many times. Mr. Gorder teaches a course in national  
10 security law. I'm aware of his curriculum and mine.  
11 Let us focus on the course you took in constitutional  
12 criminal law. Did you deal with the traditional Fourth,  
13 Fifth and Sixth Amendment issues of search and seizure,  
14 confessions, right to counsel, and things of that  
15 nature?

16 A. Yeah.

17 Q. It did not have any particular focus on  
18 national security matters as a major component of the  
19 course?

20 A. I'd have to review my course notes. Again,  
21 it's been about five years since I graduated from law  
22 school.

23 Q. Second semester, do you recall taking  
24 copyright, corporations, evidence for trial lawyers, law  
25 and the holocaust, and topics in defamation?

1 A. Yes.

2 Q. Anything else that you took in the second year  
3 of law school that I haven't mentioned?

4 A. No, that's my complete transcript.

5 Q. And then in the third year, do you recall  
6 taking a course in death penalty and habeas corpus,  
7 trial advocacy?

8 A. Yes.

9 Q. International human rights, an advanced  
10 criminal law course, and a cyber crime seminar?

11 A. That's correct, yes.

12 Q. And then the last semester, a course in  
13 Afghanistan and Islamism, free speech, trial advocacy,  
14 First Amendment, and an independent study course?

15 A. That's correct, yes.

16 Q. And, again, in the third year, as with the  
17 first two, I have read accurately all the courses that  
18 you took?

19 A. Oh, yes.

20 Q. Okay. Now, with respect to your undergraduate  
21 degree, I thought I heard you say that you received a  
22 second degree from Georgetown?

23 A. Georgetown doesn't -- you can't get a minor  
24 degree or a secondary degree within the School of  
25 Foreign Service. The option that's given is you can get

1 a certificate. And the certificate program is what they  
2 describe as the equivalent of a minor or a dual degree.  
3 It's not exactly -- it doesn't exist anywhere outside of  
4 Georgetown essentially. But I actually have a second  
5 degree. I was given a second degree from that program.

6 Q. Have you not said repeatedly in the past that  
7 you received a certificate rather than a degree?

8 A. It's a certificate program, but it's a degree.  
9 You are misunderstanding what I was saying. What I was  
10 saying is that it's a certificate program but they gave  
11 me a degree. It's a degree.

12 Q. How many courses did you take in Islam and  
13 Muslim-Christian understanding, sir?

14 A. In order to achieve the degree, you have to  
15 take two years of course work. So the first set of  
16 course work is an intensive year in Islamic history. So  
17 it's a full year-long course starting from start to  
18 finish on Islamic history.

19 Q. How many credit hours, sir, in that year?

20 A. I don't know. That's credit hours, I have no  
21 idea. But, again, let me just finish. The second year  
22 is then the first part of the year I took course work in  
23 Islamic modernism under Dr. John Voll. And then the  
24 second part of the year was writing my capstone thesis,  
25 with Dr. John Voll.

1 Q. Did you take any other courses during the  
2 second year that were not part of the Islam and Muslim-  
3 Christian understanding curriculum?

4 A. I am sorry, I don't understand your question.  
5 You mean did I take any other courses that were outside  
6 of CMCU?

7 Q. You were an undergrad at Georgetown, correct?

8 A. That's correct, yes.

9 Q. Four-year program, correct?

10 A. That's correct, yes.

11 Q. And you graduated with a BA, a BS? What did  
12 you get?

13 A. Again, it's Georgetown, so it's a BSFS. It's a  
14 bachelor of science in foreign service.

15 Q. All right. And you -- Georgetown has a number  
16 of undergraduate colleges?

17 A. That's correct, yes.

18 Q. And you were in which undergraduate college?

19 A. I was in the Edmund A. Walsh School of Foreign  
20 Service. Excuse me, I'm sorry. The Edmund A. Walsh  
21 School of Foreign Service.

22 Q. Does Georgetown have another undergraduate  
23 school that relates more specifically to the Middle  
24 East?

25 A. No. There are -- within the School of Foreign

1 Service, there is the Center for Contemporary Arab  
2 Studies, and there is the Center for Muslim-Christian  
3 Understanding. But those are both within the School of  
4 Foreign Service. I mean, I -- I -- in order to achieve  
5 my degree at BSFS, I took lots of classes at CCS, in the  
6 Center for Contemporary Arab Studies. In fact, I worked  
7 as an undergraduate research assistant for Dr. Mamoun  
8 Fandy, F-A-N-D-Y, who was a professor at CCS.

9 Q. All right. Now, Mr. Kohlmann, when you started  
10 your interest in terrorism matters, you were an  
11 undergraduate?

12 A. That's correct, yes.

13 Q. You were born in what year, sir?

14 A. I was born in 1978.

15 Q. You started Georgetown what year?

16 A. In 1997.

17 Q. Okay. Did you work between high school and  
18 college?

19 A. Yes, but not in a field substantively related  
20 to this, no. I mean, I graduated from high school in  
21 1997, I immediately went straight to college.

22 Q. Okay. So you did not take a year off, travel  
23 the world, or do work in some other location?

24 A. No, no, no. I went straight to college.

25 Q. And did you go straight through Georgetown in

1 four years?

2 A. That's correct, I did.

3 Q. All right. You began working as an intern, you  
4 said, in The Investigative Project?

5 A. That's correct, yes.

6 Q. You did that on a volunteer or a paid basis?

7 A. No, no, a paid basis.

8 Q. You then graduated from Georgetown, which is  
9 located in Washington, D.C.?

10 A. That's correct.

11 Q. And went to law school at Penn located in  
12 Philadelphia?

13 A. That's correct, yes.

14 Q. Did you continue to work for The Investigative  
15 Project while at Penn?

16 A. Yes. What I did was that I managed to schedule  
17 my classes so that they took place on Monday, Tuesday,  
18 Wednesday, and then on Wednesday afternoon, I would go  
19 down to D.C., and I would spend the next three or  
20 four days down in D.C. So I would divide half my week  
21 being in Philadelphia and half my week be in D.C.

22 Q. Now, I was curious when I was reading your  
23 testimony from one of the other cases to see that you  
24 said in an affidavit that was filed in 2004 that you had  
25 spent the previous seven years engaged in research, and

1 also giving frequent briefings. Did I read that  
2 testimony correctly?

3 A. Briefings to who?

4 Q. Well, what the testimony -- transcript -- or,  
5 excuse me, the affidavit described academic, law  
6 enforcement, intelligence agencies, Department of  
7 Justice --

8 A. That's correct.

9 Q. -- FBI, the National Security Council --

10 A. That's correct, yes.

11 Q. -- that is part of the Department of Homeland  
12 Security?

13 A. Yeah, that's correct.

14 Q. So in 2004, when you signed this affidavit and  
15 described seven years of frequent briefings, you were  
16 25, 26 years old?

17 A. That's correct, yep.

18 Q. And you had not at any point been out of an  
19 academic setting full-time in the work force?

20 A. Well, that's a matter of debate. I was working  
21 part-time at The Investigative Project, but it was  
22 closer to full-time.

23 Q. Can you tell me, please, when the first  
24 briefing that you gave to the FBI was?

25 A. I could not tell you off the top of my head. I

1 have no idea.

2 Q. Can you tell us the subject matter?

3 A. I have absolutely no idea, I'm sorry.

4 Q. Are you -- but is it -- did you then and are  
5 you telling us today that when you were an undergraduate  
6 at Georgetown you were actually in a position in which  
7 you were giving briefings to the Federal Bureau of  
8 Investigation?

9 A. Yeah. In January of 2000 when I was a  
10 sophomore or junior -- I was a junior at Georgetown  
11 University, I actually went to the White House, and I  
12 gave a briefing directly to White House counterterrorism  
13 czar Richard Clarke, and not on one occasion, but on  
14 three different occasions.

15 Q. And what was the subject matter?

16 A. On terror finance, on recruitment, on  
17 communications networks, and other aspects of al-Qaeda.

18 Q. How long did the first briefing take?

19 A. I don't know. Probably about four hours.

20 Q. Four hours you alone with --

21 A. No, no, it was me and a team of people, but I  
22 was --

23 Q. I see.

24 A. -- I was one of two people leading the  
25 briefing.



1 Q. Who were the other people who were present?

2 A. Steve Emerson, the director of The  
3 Investigative Project; Rita Katz, who was one of the  
4 other people who was leading the brief -- or was the  
5 other person who was leading the briefing alongside of  
6 me; and another lady who I would prefer not to name her,  
7 Your Honor, just because she currently works for the New  
8 York Police Department Intelligence Unit.

9 THE COURT: You don't need to.

10 BY MR. WAX:

11 Q. So is it more accurate to say then, sir, that  
12 while you were a student, that you attended briefings  
13 that were set up by The Investigative Project leaders?

14 A. No, no, that would not be accurate.

15 Q. Did you personally set up this briefing with  
16 the White House?

17 A. One of the ones -- not the first one, but the  
18 subsequent ones myself and Rita Katz, who were the ones  
19 who were leading the briefing, were the ones who  
20 contacted Mr. Clarke and his assistants and set up the  
21 subsequent briefings.

22 Q. And Ms. Katz is how old?

23 A. I don't know her age.

24 Q. Is she substantially older than you are?

25 A. I would say so, yes.

1 Q. Are you telling us that neither she nor  
2 Mr. Emerson was taking the lead on setting up these  
3 briefings?

4 A. Initially. But afterwards, once I got to know  
5 these individuals, it was pretty much me running the  
6 briefings.

7 As far as the FBI, which is what you asked  
8 about initially, almost all the briefings that I  
9 conducted with the FBI, it was me running the briefing.  
10 The reason being is that I was the one doing the  
11 substantive research. So when someone from -- in a  
12 government agency or an academic or others were coming  
13 in looking for information, I was the one they wanted to  
14 speak to because I was the one who had developed the  
15 research, myself and Rita and one or two other people.  
16 But when I say I was directing briefings, I don't mean I  
17 was attending briefings, I mean I was giving the  
18 briefing.

19 Q. How much are you getting paid for your  
20 testimony in this case?

21 A. In this case I'm getting paid at a rate of \$300  
22 per hour.

23 Q. Roughly how much money have you earned from the  
24 United States government as a consultant in the last six  
25 years, let's say since you graduated from law school?

1 A. I have absolutely no idea.

2 Q. Are we talking tens of thousands, hundreds of  
3 thousands? Give us a ballpark, please.

4 A. In the last six years?

5 Q. Yes, sir.

6 A. From all government agencies?

7 Q. Yes, sir.

8 A. Just the U.S. government?

9 Q. Yes, sir.

10 A. Probably between 1 and \$200,000. Actually --  
11 maybe a little bit more. Over six years, I don't really  
12 know. I don't check my tax returns like that. But it  
13 would be in the probably hundreds of thousands of  
14 dollars.

15 Q. Hundreds of thousands?

16 A. Over six years, yeah.

17 Q. All right. Now, you mentioned that you are  
18 working for the NEFA Foundation?

19 A. Yeah, I work as a contributor on behalf of  
20 NEFA, that's correct.

21 Q. When did you start doing work for NEFA?

22 A. I began doing work for NEFA in 2005.

23 Q. Were you ever engaged on any full-time or  
24 relatively full-time basis with them?

25 A. I work as a contributor. I mean, I run my own

1 consulting business, and I consult for clients, and they  
2 were one of the clients that I was consulting with. So  
3 I serve as a contributor, as an investigator, but I  
4 don't -- I work full-time for myself.

5 Q. How much time did you spend doing work for NEFA  
6 in 2005?

7 A. In 2005?

8 Q. Yes, sir.

9 A. On a weekly basis? Maybe -- I don't know.  
10 Maybe -- maybe five hours a week, ten hours a week.

11 Q. 2006?

12 A. Probably about ten hours a week.

13 Q. 2007?

14 A. Probably about 15 hours a week.

15 Q. 2008?

16 A. Probably about 20 hours a week.

17 Q. 2009?

18 A. Fifteen.

19 Q. And 2010, this year?

20 A. Ten.

21 Q. Ten hours a week. And what is the origin of  
22 NEFA? Do you know who set it up?

23 A. Well, it was -- I mean, I didn't found the  
24 organization. I don't know who the contributors are. I  
25 know that the organization was created among other ways

1 by a legal judgment in which there was a legal judgment  
2 in which money was given to the organization as part of  
3 a penalty, but other than that, no.

4 Q. Did the Motley Rice law firm have anything to  
5 do with the establishment of NEFA?

6 A. As far as I know, nothing.

7 Q. Do you know who David Draper is?

8 A. Yes, I do, yes.

9 Q. What do you know about him and his relationship  
10 to NEFA?

11 A. He is the director of strategic operations of  
12 NEFA.

13 Q. What, if any, involvement does NEFA have with  
14 the 9/11 lawsuits that have been pending now for quite  
15 some time?

16 A. Zero, none.

17 Q. What, if any, contribution does NEFA make to  
18 the 9/11 legal team?

19 A. Zero, none.

20 Q. Is there any consulting relationship between  
21 NEFA and the 9/11 team?

22 A. No, there is no contact whatsoever. There is  
23 no contact whatsoever between NEFA and as far as I know  
24 any attorneys involved in any legislation with regards  
25 to victims of terrorism.

1 Q. I want to shift gears a little bit now,  
2 Mr. Kohlmann, and ask you a question or two about your  
3 book. You mentioned several times, if I heard you  
4 correctly, that you have an entire chapter in the book  
5 devoted to the funding of terrorism. Did I hear that  
6 correctly?

7 A. Islamic charitable organizations, that's  
8 correct, yes.

9 Q. And in your book, is there any reference to  
10 al-Haramain?

11 A. I believe there is, yes.

12 Q. Are you sure, sir?

13 A. I'm pretty positive about that, but I'd have to  
14 take a look at my book to be sure.

15 Q. How many footnotes do you have in the book?

16 A. A couple hundred.

17 Q. Eight-hundred some odd?

18 A. A couple hundred. It's a lot. It -- you  
19 should know that the -- yeah, I mean, it's a couple  
20 hundred.

21 Q. Do you have a copy of the book with you?

22 A. No.

23 Q. Would you be surprised if the count is more  
24 than just a couple hundred?

25 A. It could be a thousand. I have no idea.

1 Again, it's -- it was an academic book. It's a  
2 scholarly book. Almost every single sentence has a  
3 footnote attached to it. The book itself is about 2,  
4 300 pages long. Given that length, I would say -- to  
5 say it's a thousand footnotes, I wouldn't be surprised,  
6 sure.

7 Q. And your recollection is that you do reference  
8 al-Haramain in it? Are you sure of that?

9 A. I'm pretty sure, but I'd have to double-check  
10 to be 100 percent sure. It was in my initial draft.  
11 There's a possibility it may have gotten cut out at some  
12 point because of the fact that it wasn't a focus of my  
13 book, but I'm -- I know it was in my initial draft. And  
14 I am pretty sure it was in the final copy that was  
15 published.

16 Q. But in any event, it was not the focus of the  
17 book?

18 A. The focus of the book was on the conflict in  
19 Bosnia-Herzegovina and foreign fighters in the conflict  
20 in Bosnia-Herzegovina.

21 Q. And the funding of fighters?

22 A. Well, let me finish. There is various  
23 different aspects of that which I studied. I studied  
24 the history. I studied their communications, their  
25 leadership, their financing. So that's why I had one

1 chapter about the financing issue. I had one chapter  
2 about their activities post-conflict. It's -- again,  
3 each chapter deals with a different aspect of what was  
4 going on there.

5 Q. We'll go back and check the book, sir, and  
6 introduce it as an exhibit if we think it's appropriate.

7 In terms of what you described as the types of  
8 sources that you look at, I did understand you correctly  
9 to say that you speak broken Arabic.

10 A. Yeah. In order to study Islam, you have to,  
11 first of all, memorize quite a great deal of Arabic  
12 vocabulary because of the fact that the religion is  
13 predicated and came from the Arabian Peninsula. Many of  
14 the essential terms are Arabic words.

15 In addition to that because of the fact that I  
16 listen and watch to -- a great deal of material that  
17 comes from the Middle East that is often in Arabic, and  
18 because I sit next to someone who is a native Arabic  
19 speaker, you end up picking up Arabic after a while.

20 Q. But it's broken? You don't hold yourself out  
21 as being fluent in Arabic?

22 A. No, not in the least bit. My understanding of  
23 Arabic is based on oral. It's not based on written. I  
24 can read characters and stuff, but it's mostly based on  
25 oral.



1 Q. All right. When you are looking at Web sites,  
2 for example, that are written in Arabic, you need  
3 someone to translate that for you?

4 A. Well, it depends what you mean. I engage in  
5 what's known as information triage. In other words, my  
6 basic knowledge of Arabic is enough for me to be able to  
7 look at a document and identify whether or not that  
8 document is relevant to the work I'm doing.

9 If I determine that it's relevant and  
10 potentially has information that is relevant and useful  
11 to what I'm doing, I then take that document, I hand it  
12 off to my research assistant, who takes it and  
13 translates it. I wouldn't rely on my own knowledge of  
14 Arabic, because, frankly, it would -- when it comes to  
15 these materials, using anyone who's not a native Arabic  
16 speaker is a waste of time. You need --

17 Q. Excuse me. The research assistant works full-  
18 time?

19 A. Yeah, full-time.

20 Q. The research assistant is a bilingual person?

21 A. He's a native Jordanian, yeah.

22 Q. The research assistant has been with -- this  
23 one has been with you for how long?

24 A. Last two years.

25 Q. Prior to that, did you have someone else who

1 was sitting beside you reading the Arabic as needed?

2 A. Either sitting beside me or someone that was in  
3 the same city as I was in that I could call and have  
4 come to meet me.

5 Q. You've described, sir, if I heard correctly,  
6 that there are a number of different types of research  
7 that one can do in terms of sources; primary, secondary,  
8 tertiary?

9 A. That's correct, yes.

10 Q. And in terms of primary sources, did I  
11 understand you correctly to say that that would mean  
12 going out and conducting interviews yourself?

13 A. Yeah, for instance, or directly observing an  
14 event.

15 Q. Can you just answer yes or no, sir.

16 A. But it's not just that. It's also directly  
17 observing an event.

18 Q. You have, if I understand correctly, conducted  
19 some primary research; is that correct?

20 A. That's correct, yes.

21 Q. You have interviewed, you said, a number of  
22 people who have been convicted of terrorism offenses in  
23 this country?

24 A. In this country, the United Kingdom, and I've  
25 also interviewed people who have not been convicted of

1 offenses but have been on the front lines.

2 Q. How many people have you spoken with in this  
3 country who have been convicted of terrorism offenses?

4 A. At least two. But there have been several  
5 others, that I -- there is two that I can think of off  
6 the top of my head, but there is a list of people who I  
7 have spoken with who have end -- I mean, well,  
8 actually -- well, at least two I can think of off the  
9 top of my head.

10 Q. How many people have you spoken with who have  
11 been convicted of terrorism offenses in the United  
12 Kingdom?

13 A. Two.

14 Q. Two more?

15 A. Two more.

16 Q. So we have a total of four?

17 A. That's correct, yes.

18 Q. In addition, you have spoken with a number of  
19 other people you describe as people who have been  
20 involved in one way or another in terrorist acts?

21 A. That's correct, yes.

22 Q. Roughly, how many?

23 A. Well, terrorist acts is -- I wouldn't describe  
24 it as that. What I would say is that these are  
25 individuals who have had direct knowledge and direct

1 role in either a mujahideen organization, a jihadi  
2 movement, or something that is financing them.

3 Q. How many, sir?

4 A. How many? Maybe two dozen.

5 Q. All right. Now, with respect to the indictment  
6 in this case and the issues that the jury will be  
7 considering, I'd like to ask you some very specific  
8 questions.

9 Have you personally spoken with any of the  
10 principal leaders of the al-Haramain organization as it  
11 existed in the year 1999, 2000, or 2001?

12 A. No.

13 Q. Have you had the opportunity at any time to  
14 speak with Aqeel Al-Aqeel?

15 A. No, I have not.

16 Q. Mansour al-Kadi?

17 A. No, I have not.

18 Q. Soliman al-But'he?

19 A. No, I have not.

20 Q. And no other people you have identified through  
21 your research as principals of al-Haramain?

22 A. That's correct.

23 Q. Have you had the opportunity to speak with any  
24 of the principals in the Saudi Joint Relief Committee  
25 about its existence, functioning, et cetera?

1 A. The Saudi High Committee for Relief, yes.

2 Q. Well, we have documents that describe it as the  
3 Saudi Joint Relief Committee. Are you referring to  
4 something you believe is a different entity?

5 A. The SJRC began as the Saudi High Committee for  
6 Relief in Bosnia. I have directly spoken with one of  
7 the principals involved with the SHR in Bosnia-  
8 Herzegovina.

9 Q. All right. My question is not about the SHR in  
10 Bosnia-Herzegovina, and the mid or late 1990s. My  
11 question is about the Saudi Joint Relief Committee that  
12 was dealing with the Russian government and Chechnya.

13 A. There is only one. It operates in different  
14 conflict zones. I understand what you are saying.

15 Q. I appreciate that. My question is: Have you  
16 spoken with any of the principals who were involved with  
17 the Saudi Joint Relief Committee and the Russian and  
18 Chechnyan situation?

19 A. You mean as per that conflict? No.

20 Q. No. Thank you, sir. Have you spoken with any  
21 of the members of the Saudi royal family about their  
22 involvement with the Saudi Joint Relief Committee?

23 A. No, they haven't volunteered that information  
24 to me.

25 Q. Have you made an effort to speak with them?

1 A. Yes, but they won't speak with me.

2 Q. Have you spoken with any members of the Saudi  
3 government about the formation of the Saudi Joint Relief  
4 Committee and the relationship between the Saudi Joint  
5 Relief Committee and the al-Haramain organization in the  
6 years 1999 through 2001?

7 A. No, I have not.

8 Q. With respect to issues involving the financing  
9 of terror or of mujahideen, let me ask you a few  
10 questions. I noticed that in 2004, you spoke with FBI  
11 Agent Carroll and he prepared a report about that  
12 conversation. Do you recall that?

13 A. I recall speaking with -- I recall speaking  
14 with him, but I don't think I saw the report about our  
15 conversation.

16 Q. Do you recall that you provided him at that  
17 time a report that you had prepared that had some  
18 discussion in it about al-Haramain and the bank accounts  
19 that al-Haramain had?

20 A. Yes. I believe what I did was I provided him a  
21 copy of a memorandum that I had written while I was  
22 working at The Investigative Project.

23 Q. All right. And that would have had your Global  
24 Terror Alert logo on it?

25 A. I don't recall.

1 Q. You don't recall at this point?

2 A. I don't remember.

3 Q. All right. Do you recall that at that time you  
4 were able to go onto an al-Haramain Web site and  
5 identify roughly 13 bank accounts related to  
6 al-Haramain?

7 A. That's correct, yes.

8 Q. And you gave that information to him?

9 A. Among others, yeah, that's correct.

10 Q. Now, in terms of attempting to determine what  
11 happens with particular money, do I assume correctly  
12 from the fact that you were looking at bank accounts  
13 that you would consider them to be an interesting or  
14 important source of information?

15 A. They are interesting. I mean, there is a  
16 limited amount I can do with bank accounts because I  
17 don't have the ability to issue subpoenas. But when it  
18 comes to tracking terror finance, one of the most  
19 difficult things is finding bank account numbers. So  
20 when I do find bank account numbers, that's one thing  
21 I -- you know, I save. There is a limited amount I can  
22 do with it but I do pass it on to others.

23 Q. Would it be your expectation that the  
24 government with the powers that are available to it  
25 might have made efforts to or should have made efforts

1 to at least look at those bank account records?

2 MR. GORDER: Your Honor, objection as to  
3 relevance. I'm not sure what this has to do with his  
4 qualifications.

5 MR. WAX: Primary, secondary, tertiary sources.

6 THE COURT: You said would it have made sense  
7 for the government to do this, I think that's probably  
8 not too relevant to me.

9 BY MR. WAX:

10 Q. Did you make an effort to obtain any records  
11 from the bank accounts that you had identified sometime  
12 prior to October of 2004 when you provided this  
13 information to Agent Carroll?

14 A. I have no way of doing that. I have no way of  
15 getting at bank account information. That's private  
16 information that's only available via subpoena or to the  
17 governments or to the people who are the owners of the  
18 bank accounts. I could not get access to that  
19 information.

20 Q. I have read in some of your prior testimony  
21 that you have -- you used the phrase gone undercover at  
22 some point. Did I read that correctly?

23 A. That is correct, yeah.

24 Q. And in terms of going undercover, did you make  
25 any effort to go undercover with respect to the



1 al-Haramain organization?

2 A. That's not what I meant by undercover. That's  
3 much different. When I was talking about doing  
4 undercover work, that was going in terms of extremist  
5 organizations and meeting people and meeting their  
6 leaders. You can't go undercover to get bank account  
7 information without engaging in illicit activities,  
8 which I don't engage in.

9 Q. Did you make any effort to go undercover in the  
10 sense that you have just described it, is my question,  
11 with respect to al-Haramain?

12 A. Oh, I'm sorry, I thought you meant as per the  
13 bank accounts. You mean to go undercover in  
14 al-Haramain? No, I did not do that.

15 Q. Okay. Did you -- I read in one of the  
16 transcripts that you at some point sent an e-mail to  
17 some fellow, I'm not going to pronounce his name  
18 properly, Irhaby?

19 A. Irhaby 007.

20 Q. Irhaby and that will be I-R-H-A --

21 A. B-Y 007.

22 Q. B-Y. Thank you. And you just put out an  
23 e-mail and said, hey, Irhaby, I'm here. I'm Evan  
24 Kohlmann. Let's have a chat.

25 A. It's not quite that simple. This is an

1 individual who knew who I was. And he had put out a  
2 video recording of me on the Internet. As a result, I  
3 wrote an e-mail back to him. It was more me replying to  
4 him saying, obviously you know who I am and obviously I  
5 know who you are, so why don't -- rather than, you know,  
6 ducking around this, why don't you just talk directly to  
7 me.

8 Q. Did you make any such effort to communicate via  
9 e-mail with any member of the al-Haramain organization?

10 A. Yeah. I believe we tried sending e-mails to  
11 al-Haramain at various different times. We didn't get a  
12 response back.

13 Q. Do you recall specifically when you did that?

14 A. No. It would have been on probably more than  
15 one occasion, but I can't recall. I know that typically  
16 speaking what we do is we try -- whenever we get e-mail  
17 addresses or phone numbers, we attempt to contact them  
18 and see what kind of information we can get.

19 Sometimes it's lucrative, sometimes it's not.  
20 We contacted the head of BIF in Saudi Arabia,  
21 Benevolence International Foundation. And he responded.  
22 But with regards to al-Haramain, I don't believe we got  
23 a response.

24 Q. Do you recall specifically what e-mail address  
25 you used to attempt to communicate with al-Haramain?

1           A.       I have no idea. This would -- I should  
2 clarify. This would have been between eight and ten  
3 years ago, so I -- I know that we engaged in this kind  
4 of activity, but I could not give you specific dates or  
5 addresses or whatnot. I just know that if we had gotten  
6 back a response, I would probably remember more, but I  
7 know we didn't get back a response.

8           Q.       All right. With respect to some of the e-mails  
9 that the government showed you, whatever relatively  
10 small number it was, do you recall the Web sites or the  
11 persons from whom those e-mails appeared to have been  
12 sent?

13          A.       I believe PSQ.org, or I'm sorry, I don't  
14 remember. It's -- there was one like -- there was a  
15 couple, I believe, with al-Haramain addresses and there  
16 was one with a P. Off the top of my head, I couldn't  
17 give you someone's e-mail address.

18          Q.       Do you recall if there was anything from a  
19 person named a Abdul Qaadir?

20          A.       Yes, excuse me, yes, there was.

21          Q.       Did you make any effort to contact Abdul  
22 Qaadir?

23          A.       No, I did not.

24          Q.       Have you then not spoken with Abdul Qaadir?

25          A.       No, I have not.

1 Q. In many --

2 A. I should add I did run a search on his e-mail  
3 address. And I attempted to locate other messages that  
4 he might have posted on the Internet, but I didn't  
5 contact him directly.

6 Q. Okay.

7 A. I should also add that when I'm engaged in a  
8 case, a criminal case, I don't engage in that kind of  
9 activity. I don't try to send subterfuge e-mails to  
10 people or subterfuge phone calls because that would be  
11 interfering with a criminal investigation.

12 Q. Nor do you just send out an e-mail as you did  
13 with Irhaby, hi, I'm Evan Kohlmann, I'd like to chat?

14 A. Well, that's --

15 Q. My question is -- let me rephrase the question.  
16 In this case, you did not do that with respect to Abdul  
17 Qaadir?

18 A. No, I did not.

19 Q. Okay. Now, I notice in terms of, you know,  
20 comparison of the work that you did in this case as  
21 contrasted with some of the others, Bosnian case about  
22 which you testified, if I understood correctly, you've  
23 actually spent time in Bosnia?

24 A. That's correct, yes.

25 Q. And you have told us that you had the

1 opportunity to speak with a number of people firsthand  
2 who were involved in some of the other cases in which  
3 you've testified?

4 A. That's correct, yes.

5 Q. All right. Now, in terms of the second types  
6 of sources that you described, you mentioned audios and  
7 videos. Have you had the opportunity to be given access  
8 to any classified information in this case?

9 A. Not that I'm aware of. I --

10 Q. Do you have a security clearance?

11 A. No, I don't.

12 Q. Have you ever held a security clearance?

13 A. No, I have not.

14 Q. So to your knowledge, the government has not  
15 provided you any material obtained in a manner that it  
16 would be classified?

17 A. Not unless there has been some kind of special  
18 dispensation given, but, no, that's -- I deal only in  
19 open source information. I deal only in open source  
20 research. If I'm writing an expert report, I'll take  
21 documents from the government to help educate me in  
22 terms of what they might be developing separately if it  
23 matches with my open source research, but I don't deal  
24 with classified sources.

25 Q. Have you had the opportunity to hear any tape

1 recorded conversations involving my client, Mr. Seda?

2 A. No.

3 Q. Have you had the opportunity to hear any tape  
4 recorded conversations involving Soliman al-But'he?

5 A. No.

6 Q. Aqeel Al-Aqeel?

7 A. Nope.

8 Q. Mansour al-Kadi?

9 A. Nope.

10 Q. Nobody?

11 A. Again, I don't have a security clearance and I  
12 wouldn't want to get into reviewing classified documents  
13 without a security clearance.

14 Q. All right. And you have not had the  
15 opportunity to hear any such material from any source?  
16 You didn't find anything, for example, on one of the Web  
17 sites that are -- that you referred to in your direct  
18 examination -- clearinghouses? You didn't come across  
19 tape recorded conversations of any of those individuals  
20 in any source such as that?

21 A. Classified recorded conversations, no.

22 Q. No. Unclassified, or classified or  
23 unclassified on a clearinghouse Web site put out by --

24 A. Recorded conversations between whom?

25 Q. Mr. Sedaghaty, Mr. al-But'he, Aqeel Al-Aqeel,

1 Mansour al-Kadi --

2 A. No.

3 Q. -- or any of the other principals of  
4 al-Haramain?

5 A. No. I've reviewed documents that have their  
6 name on business cards, letters, and whatnot, but I  
7 haven't reviewed audio recordings, no.

8 Q. Have you seen any video recordings of any of  
9 those four individuals I just mentioned in communication  
10 with each other?

11 A. No, no, no.

12 Q. Have you had the opportunity to see or hear any  
13 video or audio recording involving Mr. Sedaghaty,  
14 Mr. Aqeel, Mr. Al-But'he, discussing the -- a donation  
15 by an Egyptian man named El-Fiki?

16 A. No, I have not.

17 Q. All right. In terms of al-Haramain, in  
18 referring to the report that you provided to Agent  
19 Carroll back in 2004, please help me be sure I  
20 understood correctly what you had said. al-Haramain, if  
21 I understand correctly, you described back then as only  
22 a quasi private entity?

23 A. Quasi private, yes, because of the fact that  
24 with Islamic charitable organizations in the Arabian  
25 Peninsula, particularly in Saudi Arabia, very frequently

1     there are links back to one element or another within  
2     the government. In other words, whether we're talking  
3     about al-Haramain or the Muslim World League, or Jamiat  
4     Ahya al-Turath -- J-A-M-I-A-T, A-H-Y-A, A-L, dash,  
5     T-U-R-A-T-H -- these organizations very frequently have  
6     links back to the governments, whether it's the Kuwaiti  
7     government, the Saudi government, the government of the  
8     UAE.

9         Q.     Let me keep the focus, please, on al-Haramain.  
10     If I understood correctly, you described it as being  
11     very closely controlled and supervised by members of the  
12     Saudi government?

13         A.     Certain members of the Saudi royal family,  
14     that's right.

15         Q.     Yes. And the members of the Saudi royal family  
16     would be people who would often be part of the Saudi  
17     government itself?

18         A.     That's why I described it as quasi private.

19         Q.     Okay. So I did understand that correctly?

20         A.     That's correct, yes.

21         Q.     You described, if I understood correctly, a  
22     connection between Mr. Aqeel Al-Aqeel and a foundation  
23     on which one of the Saudi princes, Abdul-Aziz Fahd bin  
24     Abdul Aziz, if I understood correctly, was also a board  
25     member?



1           A.       I believe so, but you are going to have to give  
2 me the exact reference.

3           Q.       This was in your report that you provided to  
4 Agent Carroll.

5           A.       Okay. But you have to read me the exact  
6 reference. I'm not sure what you are referring to.

7           Q.       I'll get back to that. Were you provided any  
8 information by the government regarding humanitarian  
9 activities in which Mr. Sedaghaty was involved here in  
10 the United States?

11          A.       What kind of humanitarian -- I don't -- I mean,  
12 I was provided with information about his activities  
13 with al-Haramain, to the degree of the exhibits that  
14 I've been provided, but I don't --

15          Q.       Were you provided any documentation of his  
16 volunteer work in Ashland, Oregon?

17                 MR. GORDER: Your Honor, I'm going to object.  
18 I think we're, again, getting beyond his qualifications.

19                 THE COURT: Yeah, sustained.

20                 MR. WAX: Your Honor, if I understand *Daubert*  
21 correctly, part of the court's function here is not only  
22 to assess the qualifications but also assess the  
23 relevance of the proposed testimony, and the fit that  
24 that proposed testimony has to the specific issues in  
25 this case. And I believe that this line of inquiry goes

1 to those aspects of *Daubert*.

2 THE COURT: I disagree.

3 MR. WAX: Thank you.

4 BY MR. WAX:

5 Q. In looking through the report that you prepared  
6 in this case, I saw many references in your footnotes to  
7 material that came off of a number of Web sites, an  
8 al-Haramain Web site, a Qoqaz Web site, a Kavkaz  
9 Institute Web site, et cetera.

10 A. That's correct, yes.

11 Q. Okay. And do I understand that it's your view  
12 that many of these Web sites put out by organizations of  
13 that nature include a fair amount of propaganda?

14 A. That's correct, yes.

15 Q. And do you agree that propaganda would often  
16 include a fair amount of exaggeration?

17 A. It may. It can. It depends on -- it really  
18 depends on the given case. It depends on who's saying  
19 it and in what context they're saying it. It's not --  
20 propaganda is not universal. It depends on the  
21 organization, the intent of the organization. It's a  
22 specific inquiry.

23 Q. Sure. But as a general proposition in terms of  
24 your view of the -- you said, I think, it is now  
25 billions of documents that you have on your database --

1 A. Sure.

2 Q. -- is it not your observation that many do  
3 include exaggerations in the propaganda that is put out  
4 by the organizations?

5 A. That's the purpose of doing the comparative  
6 analysis is trying to cut out the puffery and try to  
7 identify the underlying facts that are presented in  
8 these -- what can be ascertained or what can be counted  
9 on as reliable.

10 Q. The question, sir, is: Do you agree that there  
11 is a fair amount of propaganda that includes  
12 exaggeration in some of the material that you find on  
13 the Web sites? Not what you do with it, but you agree  
14 that it's there?

15 A. I could repeat my previous answer which is that  
16 it depends on a given case. There is a small -- a  
17 degree of puffery in propaganda but it depends on a  
18 given case. You have to point me to a given example,  
19 and I could tell you.

20 I mean, when it comes to a recording from Osama  
21 bin Laden, frankly, there's a lot of puffery in that.  
22 When it comes to something that's put out by a  
23 charitable organization, it's not so much puffery. It  
24 depends who you're talking -- if it's a political leader  
25 versus a charitable leader versus something, it depends

1 on what their perspective is, what their purpose in  
2 releasing this -- the recording or the document is, who  
3 they are. It's contingent upon so many different  
4 factors, you can't possibly generalize.

5 Q. Let me switch to another aspect of this case if  
6 I may. If I have understood correctly the positions  
7 that you have expressed in the past, the al-Haramain  
8 charity operated in roughly how many countries?

9 A. Many. Something like 70 different countries,  
10 many.

11 Q. And it dealt with some -- in some years, in the  
12 late '90s, early 2000s, 50, 60, \$70 million a year?

13 A. That sounds about right, yeah.

14 Q. And do I also understand correctly that it was  
15 your understanding that al-Haramain was engaged in a  
16 significant amount of what one might call legitimate  
17 charitable activity?

18 A. My understanding is that at least half of their  
19 activities were probably legitimate.

20 Q. Thank you. Now, switching focus to one other  
21 subject, I want to be sure I understand this. The study  
22 that you have done of the Chechen/Russian wars took you  
23 back actually to the 1800s and the expansion of the  
24 czarist empire?

25 A. That's correct, yes.

1 Q. And the struggles in the Islamic Republics that  
2 became the southern tier of the czar's land?

3 A. That's correct, yes.

4 Q. Through the Soviet era and the struggles  
5 between the Soviet government and the populations in --  
6 same region, the region that includes Chechnya?

7 A. That's correct.

8 Q. And then into the 1990s, after the fall of the  
9 Soviet Union, and the Russian Federation's desire to  
10 maintain control in some of those republics, while some  
11 of the Islamic Republics became independent countries,  
12 some, such as Chechnya, did not?

13 A. Well, actually, Chechnya did become  
14 independently briefly.

15 Q. Very brief time. And Russia was very unhappy?

16 A. She was very unhappy, yes.

17 Q. Okay. And if I understand correctly, your  
18 perception of what Russia was doing in Chechnya included  
19 some pretty brutal and God awful actions against both  
20 military and civilian populations?

21 A. Yeah. I mean, there is -- the way that I would  
22 describe it is that there is a lot of brutality that  
23 goes around the Caucasus, but the Russians have  
24 certainly played a role in that, yes.

25 Q. In one of the earlier cases in which you

1 testified, I think you went around the horn with the  
2 lawyer about the total number of refugees who were  
3 created in Chechnya. And there was a discussion of a  
4 State Department report. Several hundred thousand  
5 refugees, at the least, you would agree with me?

6 A. Yeah, Russians, Muslims. I mean, the capital  
7 of Chechnya, Grozny, was leveled to the ground. So  
8 anyone who lived there, regardless of where they were  
9 from or who they were, had to leave.

10 Q. Okay. And the brutalities and atrocities were  
11 perpetrated, among others, by the Russians?

12 A. They were perpetrated all around, but I think  
13 the answer is that the Russians had the greatest degree  
14 of military force, so frequently the worst brutality was  
15 associated with them.

16 Q. All right. In terms of what was happening in  
17 Chechnya in the mid and late 1990s and on into 2000, if  
18 I understand you correctly, the Russians were actually  
19 obstructing efforts that people were making to provide  
20 humanitarian aid to some of the -- the population in  
21 Chechnya?

22 A. They were obstructing certain efforts to  
23 provide humanitarian aid, yes. Not all, but certain  
24 efforts, yes.

25 Q. Correct. And there were some, you know,

1 humanitarian organizations that were attempting to do  
2 some business in Chechnya. And as you are indicating,  
3 the Russians accepted some and not others?

4 A. What happened wasn't -- in the beginning I  
5 think the Russians viewed most of this as benevolent or  
6 at least as harmless. But by 1999, the Russians had  
7 decided that some of the activities that these  
8 organizations were engaged in went beyond just providing  
9 food and medicine, in fact, that they were providing  
10 money to combatants. And at that point, a number of  
11 organizations began to be scrutinized by the Russian  
12 government. Several of them were prevented from getting  
13 involved in the conflict, or else they were -- they  
14 became adversaries of the Russian government.

15 Q. And you are aware that in late 1999 in an  
16 effort to address some of those concerns, the Russian  
17 Federation and the government of Saudi Arabia actually  
18 entered an agreement?

19 A. That's correct.

20 Q. Signed an agreement, and through that  
21 agreement, among other things, the Saudi Joint Relief  
22 Committee was authorized to operate in Chechnya and to  
23 provide aid?

24 A. I believe so, that's correct, yeah.

25 Q. Now, I want to -- should have done this at the

1 beginning -- to ask you a definitional question. You  
2 described yourself, if I heard you at the outset, as an  
3 international terrorism consultant.

4 A. That's correct.

5 Q. I'd like to talk to you for a minute, please,  
6 about the definition of that term.

7 A. Sure.

8 Q. Let me ask you this way, if I can: Would you  
9 please define the word "terrorism" as you are using it  
10 in that phrase?

11 A. Well, I think it's more of a title than  
12 anything else. If you want to know exactly the area  
13 that I study, I study transnational jihadi movements.

14 Now, terrorism can be -- can take many  
15 different forms, but in this case I'm referring to  
16 non-state actors who are engaging in violence, either  
17 directed against civilians, directed against  
18 noncombatants, or directed against, you know, even  
19 soldiers who are not in an active combat zone, or  
20 individuals who are financing that activity, individuals  
21 who are participating in logistical support for that  
22 activity. In other words, it refers to, generally  
23 speaking, organizations that have either been named as  
24 the SGGTs, specially designated global terrorists; as  
25 foreign terrorist organizations, FTOs, under the U.S.



1 State Department definition; or else have been involved  
2 with individual -- or who are directly partnered with  
3 individuals who are SGDTs or FTOs.

4 Q. All right. So let's go back, if we can please,  
5 just to Chechnya.

6 A. Sure.

7 Q. From the perspective of the Chechen people in  
8 the years 1994, 1995, they were engaged in a war of  
9 liberation, resisting Russian domination?

10 A. I wouldn't want to speak on behalf of the  
11 Chechen people, but I think it's fair to say that there  
12 was a war of liberation or a war of independence that  
13 took place. That was initially led in 1991 by Dzhokhar  
14 Dudayev -- D-Z-O-K-H-A-R, D-U-D-A-Y-E-V -- who began a  
15 nationalist movement to try to create an independent  
16 state. Yeah.

17 Q. If I may try to focus the discussion here.  
18 The -- we had a war in Chechnya between those Chechens  
19 who wanted freedom and the Russians who didn't want it?

20 A. There's not one war that took place in the  
21 Caucasus. There was multiple wars that took place  
22 between the years of 1991 and today. There is --

23 Q. I appreciate that. I'm sorry. I should have  
24 restated the introduction to the question, '94, '95.

25 A. In 1994 and in 1995, the conflict was mostly at

1 that point a nationalist struggle.

2 Q. Okay. Now --

3 A. It began shifting in 1995.

4 Q. Okay. I'm not asking you that question. Let's  
5 just stay with me, please. If I understood you  
6 correctly, you would distinguish between a war of  
7 liberation, or perhaps, from the Russian perspective, a  
8 secessionist or civil war movement, from the acts of  
9 terror that are committed against, I think you said,  
10 civilian populations or non -- soldiers who are not in  
11 combat?

12 A. Well, I studied both. I studied --

13 Q. I'm not asking you what you studied. I'm just  
14 asking in terms of the definition. Do you distinguish  
15 between an act of terror committed by a person against a  
16 civilian -- start there -- and a person fighting for the  
17 liberation of his country against what he perceives to  
18 be an oppressive neighbor? Do you make that  
19 distinction?

20 A. These are all subjected to individual  
21 definitions. But the latter group, I would generally  
22 refer to as insurgents; whereas the former group, I  
23 would generally refer to as extremists or terrorists.  
24 However, it's so factually -- you can't just say someone  
25 killing civilians, is that the terrorist; someone that's

1 not -- doesn't fit that definition, is not. It's  
2 factually dependent.

3 It's not factually dependent on whether or not  
4 you're Chechen or not. It's just -- it's dependent upon  
5 the conditions that are involved.

6 Q. All right. Let me ask it this way, if I can:  
7 During the American Revolution the French king supported  
8 the colonies in their effort to break away from England.

9 MR. GORDER: Your Honor, I think we're getting  
10 a little far afield.

11 MR. WAX: Well, I'm having a hard time getting  
12 an opinion --

13 THE COURT: You have four minutes. You can use  
14 it the way you'd like.

15 MR. WAX: Your Honor, I am going to urge you  
16 quite strenuously to let me have more than four minutes.  
17 I mean, this is --

18 THE COURT: Thank you. You're asking questions  
19 about the French in the American Revolution. I know  
20 something about that, but I don't see that as being  
21 helpful.

22 MR. WAX: Well, I'm not getting a straight  
23 answer to what I thought was a pretty simple question.

24 THE COURT: Well, you have the court's limits.

25 BY MR. WAX:

1           Q.       Mr. Kohlmann, if I understood correctly from  
2 the report that you -- or the information you provided  
3 to the FBI in 2004, you stated that the al-Haramain  
4 Ashland -- excuse me -- the al-Haramain English language  
5 Web site was run by or out of Ashland, Oregon.

6           A.       Yes. I believe that was determined through  
7 looking up Internet domain records.

8           Q.       Do you have specific information that you can  
9 provide us about that? Which domain records did you  
10 look up? What were the IP addresses? And what did you  
11 find?

12          A.       I'd have to look back in my records to give you  
13 a specific answer, but I believe what the answer is is  
14 that I read -- and again --

15          Q.       Do you recall today -- I'm not asking you what  
16 you believe. Do you recall today what information you  
17 looked at?

18          A.       Not definitively. I would have to review back  
19 and look in my notes. Again, I don't want to waste  
20 time, but I believe the answer is I ran a WHOIS search  
21 on the domain name alharamain.org. And I returned back  
22 with the address here in Ashland.

23                   I also believe that the Ashland address was  
24 actually listed on the Web site at a certain location.

25          Q.       But you don't recall that specifically?

1           A.       You are asking me a very detailed factual  
2 answer.

3           Q.       Yes, I am.

4           A.       I'd have to go back and look at my notes.

5           Q.       Did you speak with Mr. Sedaghaty and ask him  
6 that question?

7           A.       No, I did not.

8           Q.       Mr. al-But'he?

9           A.       No, I did not.

10          Q.       Anybody else?

11          A.       Nope.

12          Q.       Did you have access to the computers that the  
13 government seized from the al-Haramain building in  
14 Ashland and have the opportunity to see whether they  
15 contained any software or other information suggesting  
16 that they were used for that purpose?

17          A.       No. In this particular case, I wasn't hired to  
18 do a forensic analysis of any hard drives.

19          Q.       The answer then is no?

20          A.       Again, I wasn't hired to do a forensic  
21 analysis.

22          Q.       Is the answer no?

23          A.       I wasn't hired to do a forensic analysis. The  
24 answer is no.

25          Q.       Thank you. In the report that you prepared in

1 this case, if I understood correctly, you stated that  
2 you learned that certain people in certain charities  
3 were skimming funds that were intended for refugee type  
4 relief and using it for other purposes?

5 A. That's correct, yes.

6 Q. Can you please tell me what information you can  
7 provide, with specifics, about any such activity with  
8 respect to al-Haramain?

9 A. Yeah. I have records -- original records from  
10 the army -- the Muslim army of Bosnia-Herzegovina, the  
11 security service.

12 Q. With respect to al-Haramain and Chechnya, sir,  
13 I'm not asking about Bosnia, I'm sorry if I wasn't clear  
14 on the question. What specific information, if any, do  
15 you have regarding the skimming of funds from  
16 al-Haramain in Chechnya?

17 A. Are you including the documents that I was  
18 provided in this case by the government or no?

19 Q. And by that you would be referring to the FSB  
20 documents?

21 A. I believe so, yes, that would be one, yes.

22 Q. All right. Other than that?

23 A. I'd have to look back, but I mean there has  
24 been a significant amount of documentation of this. Are  
25 you talking about primary, secondary, or tertiary

1 sources?

2 Q. Start with primary.

3 A. Primary, I don't think so. But secondary and  
4 tertiary, I believe that there are sources, but I  
5 could -- I could get them for you, but I can't recount  
6 them off the top of my head.

7 Q. You told us previously that you have had no  
8 audio or video communications with anyone related to  
9 al-Haramain and Chechnya. So would that not eliminate  
10 secondary sources on this question?

11 A. Well, secondary -- you're talking about things  
12 with al-Haramain, but I could have also gotten video  
13 recordings which show a camp in the Caucasus, which I  
14 know to be the camp of Ibn ul-Khattab. And I happen to  
15 know that that is being funded by al-Haramain.

16 Q. Tell me, please, the source of the information  
17 which causes you to say you know it is funded by  
18 al-Haramain. What is the source of your information?

19 A. I'd have to get the exact footnote, but I  
20 believe it's a sworn document in federal court. I  
21 believe it's the Northern District of Illinois. I'd  
22 have to double-check on that. It's -- what it is --

23 Q. Which case are you referring to?

24 A. I believe it's the Enaam Arnaout case.

25 Q. And what do you recall about this alleged sworn

1 document?

2 A. I'd have to check back and see. I'd have to  
3 check back. I mean, you're asking me about very, very  
4 specific exhibits that I was not prepared to answer  
5 questions here. If you want me to dig this stuff up,  
6 I'd be happy to do it.

7 MR. WAX: May I have a moment, please, Your  
8 Honor?

9 THE COURT: Yes.

10 (Discussion held off the record between  
11 co-counsel.)

12 MR. WAX: Your Honor, the other areas that I  
13 believe that I should be permitted to go into are the  
14 ones that relate to what we understand to be the other  
15 aspects of the court's role as a gatekeeper at a *Daubert*  
16 hearing.

17 We believe that Mr. Kohlmann's report is  
18 replete with exaggerations, irrelevancies, and highly  
19 prejudicial information that should not have any  
20 presence in this courtroom in front of the jury.

21 And what I believe that I should be entitled to  
22 do is to go through the report with him on a paragraph-  
23 by-paragraph basis and to explore the extent to which  
24 the material that's contained in this report, which we  
25 take to be what the government is intending to elicit



1 from him in front of the jury, is just completely  
2 irrelevant to the issues in this case. That's where I  
3 am at in terms of the questioning and what -- kind of  
4 what I request permission to pursue.

5 THE COURT: Thank you. I gave you the limits.  
6 I've allowed you to go beyond them. You used some of  
7 the time for material that, frankly, has really almost  
8 nothing to do with what this is about. And so those  
9 were my limits. And I'm going to stick with them.  
10 We're in recess.

11 (Recess: 11:05 until 11:16 a.m.)

12 THE COURT: Go ahead and be seated, please.

13 Yeah, in light of the last argument, I do want  
14 to remind counsel that, of course, the expert report is  
15 not coming into evidence. And there are some matters in  
16 there that won't be allowed. There is some that will.  
17 But that's true of the material I've seen on Colonel  
18 Lang. But this is about qualifications, methodology,  
19 whether someone has the right background and that sort  
20 of thing.

21 All right. Do you want to call your witness,  
22 Mr. Wax.

23 MR. WAX: Yes, Your Honor. Colonel Patrick  
24 Lang.

25 THE COURT: Thank you.

1 MR. WAX: And, Judge, we have a copy of his  
2 résumé that's been revised, I'd hand that up.

3 THE COURT: Thank you. Counsel, with regard to  
4 schedule, I'm taking our midday break at 11:30, and it  
5 will go until a few minutes after 1:00, so it will be a  
6 nice, generous break today, more than you can count on  
7 with me. Go ahead. Raise your right hand, please.

8 (The witness was sworn.)

9 THE CLERK: If you would please take the  
10 witness stand. Please watch, we have some cords strung  
11 out here.

12 MR. WAX: Your Honor, before the testimony with  
13 Colonel Lang begins, I do anticipate that it will  
14 involve reference to classified material. And in  
15 discussing with him his ability to discuss his  
16 background and qualifications, he expresses some concern  
17 that some of what he will be describing to the court,  
18 you know, may involve some classified matters that would  
19 require us to have the courtroom appropriately cleared.

20 THE COURT: All right. Please stay away from  
21 that for the next ten minutes. And then during the  
22 break -- we have to do some things, like bring another  
23 disc down for the court reporter and so on. We can take  
24 the other after our midday break.

25 MR. WAX: Thank you.

1 THE WITNESS: Good morning, Your Honor.

2 THE CLERK: Colonel, your microphones are  
3 located here. There's water for you. So if you could  
4 keep your papers away from the microphone.

5 If I could have you please state your full name  
6 for the record, spelling your last name for the court  
7 reporter.

8 THE WITNESS: Walter Patrick Lang, Jr. The  
9 last name is spelled L-A-N-G.

10 THE CLERK: Thank you.

11 THE COURT: As far as I'm concerned, you don't  
12 need to go into the CV. You can, if you'd like, of  
13 course, but it's just a time matter.

14 MR. WAX: I appreciate that, Your Honor. We  
15 will attempt to bring out those aspects that we think  
16 are most important.

17 DIRECT EXAMINATION

18 BY MR. WAX:

19 Q. Colonel Lang, could you tell the court, please,  
20 very briefly about your educational experience.

21 A. Well, I graduated from the Virginia Military  
22 Institute in 1962, and the University -- with a BA  
23 degree -- and from the University of Utah with an MA in  
24 Middle East studies in 1976. And I am a graduate of the  
25 Armed Forces Staff College, the Army Command and General

1 Staff College, and the U.S. Army War College.

2 Q. Now, Colonel Lang, would you tell the court  
3 please when you first entered the service of the United  
4 States military?

5 A. On the 10th of June 1962, I was commissioned in  
6 the regular Army as an infantry officer.

7 Q. And did you at some point relatively early on  
8 in your career start dealing with matters related to  
9 intelligence?

10 A. Yes. After a few years in the infantry, I went  
11 into the Special Forces, the Green Berets. And then  
12 after a year or two, took command of an operational  
13 detachment. I was brought into the staff intelligence  
14 work of the 8th Special Forces Group, and I did that for  
15 the rest of my career until 1988 when I retired from the  
16 Army, except for three years that I taught Arabic as the  
17 professor of Arabic at West Point.

18 Q. Now, would you please tell the court a little  
19 bit about some of your early experiences in the 1960s  
20 and '70s in Vietnam, to the extent that you can here in  
21 this setting, involving intelligence matters.

22 A. I -- in 1968 and '69, I commanded a clandestine  
23 operations detachment in 3 Corps, that's north of the  
24 Saigon border. And I cannot discuss that in great  
25 detail in an unclassified setting. And then I had

1 several other tours of duty in which I was a clandestine  
2 operations officer in various parts of the world. Often  
3 conducted operations against the KGB, the GRU, against  
4 foreign guerrilla movements of various of kinds, in  
5 conjunction with the CIA.

6 I have two awards from the CIA given for  
7 recruitments of Warsaw Pact personnel. And after I  
8 retired from the Army, I continued in intelligence work  
9 as a member of the Defense Intelligence Senior Executive  
10 Service.

11 Q. Let me focus for the next few moments on some  
12 more details about your educational background. You  
13 mentioned getting a master's degree at -- in Utah. Was  
14 that while you were an active member of the Armed  
15 Services?

16 A. Yes. I had completed the Arabic language  
17 school at Monterey, California, with the Defense  
18 Language Institute, and got a perfect score on the  
19 achievement test. So they decided they were going to  
20 send me next to graduate school in Middle East studies.  
21 And I was supposed to have gone to the American  
22 University in Beirut, but a civil war broke out. And so  
23 they diverted me to Utah where I took a degree which  
24 concentrated on modern Arab literature, on the social  
25 anthropology in the Middle East, and the history of the

1 politics of the Middle East. And I had a grade point  
2 average at the end of 4.0 of 4.

3 Q. And you've indicated that that master's program  
4 took place after completion of the Army's or the Armed  
5 Services Arabic Language School in Monterey, California?

6 A. That's correct. I forgot to say that I was  
7 also admitted to the International Honor Society of Phi  
8 Kappa Phi at Utah.

9 Q. All right. So you were back then in the 1970s  
10 and are you still today fully fluent in Arabic?

11 A. Yes, I am, in fact. After this I -- in  
12 addition to teaching Arabic at the college level, I, in  
13 fact, worked for many years in the Middle East. And  
14 in -- sometimes in situations in which there were no  
15 English speakers really. So I've had a great deal of  
16 practice.

17 Q. All right. Now, in addition to your study of  
18 Arabic as a language, you are indicating that your  
19 education in this master's program included study of  
20 politics, anthropology, social anthropology. If you  
21 could expand on that a little bit, please, sir.

22 A. Well, I've always had the conviction in the  
23 intelligence business that the knowledge of mankind and  
24 the doings of mankind is more significant than the  
25 rigors of political science as a discipline. So I

1 tended to concentrate on anthropology as a record of the  
2 behavior of human groups, especially in the Middle  
3 Eastern context, and the history of politics in the  
4 Middle East as the actual record of what occurred  
5 probably as a result of those intermixtures.

6 I also did quite a lot of developmental  
7 economics focused on the Middle East at Utah.

8 Q. Now, in 1976, did you find yourself at West  
9 Point?

10 A. I did. I was -- I unexpectedly received a  
11 phone call one day that told me that I was summoned to  
12 go up and create program in the Arabic language and  
13 Middle East studies at the Military Academy at West  
14 Point.

15 Q. So you were the founder and creator of a  
16 program which is still ongoing today?

17 A. Yes, that's right. I created the program  
18 curriculum and taught the courses for the first three  
19 years until I departed for another assignment. While I  
20 was there, I was a member of the faculty senate,  
21 elected. And I was twice selected as the best classroom  
22 instructor of the year at the Academy.

23 Q. Now, when you left West Point, what was your  
24 next assignment or posting?

25 A. Well, I had this interesting Hobson's choice

1 there. They asked me to stay on permanently, and I  
2 couldn't imagine anything I wanted to do less, and so I  
3 decided to accept the Army's offer to become the Defense  
4 and Army attaché of the Republic of Yemen. That was  
5 then North Yemen. Since then the two countries, north  
6 and south, have combined. I did that for two-and-a-half  
7 years.

8 Q. And when you were the attaché at that posting,  
9 did you live in Yemen?

10 A. Oh, yes, I lived in San'a, the capital of Yemen  
11 with my wife.

12 Q. Can you explain for the court, please, in  
13 general terms, what your responsibilities as the attaché  
14 were?

15 A. Well, I worked for both the ambassador, and,  
16 therefore, was a kind of pseudo State Department  
17 employee, and I also worked for the director of the  
18 Defense Intelligence Agency as his representative. I  
19 was a consular of embassy in the State Department sense  
20 for military affairs. And at the same time, I was  
21 collecting all over the country on an overt basis  
22 information about the Soviet and Chinese military  
23 missions in the country, which were very large. I did  
24 spend a lot of time with the Soviets because of that.  
25 And there was a large civil war going on in the



1 southeast part of the country against the National  
2 Democratic Front, which was also backed by the Soviets,  
3 so I spent a lot of time on the Soviet dealings there  
4 and talking to prisoners taken by the Yemeni Army who  
5 had been trained by the Soviets, things like that.

6 Q. In that capacity were you called upon to  
7 analyze data, exercise judgment, and make  
8 recommendations to people in the embassy, in the State  
9 Department, in the Defense Department or elsewhere?

10 A. Well, yes, throughout the U.S. government. I  
11 was the military representative in the country for all  
12 things that had to do with intelligence, so I had to  
13 judge what the extent was of the Soviet and Chinese  
14 programs, how effective they were, how the guerrilla war  
15 was going, advise the ambassador as to how much military  
16 assistance he ought to recommend the United States  
17 provide, to compete with the Soviets, for example. And  
18 I had to travel all the time back to Washington to talk  
19 to the State Department and the Treasury and National  
20 Security Council about these issues, yes.

21 Q. Let's see if in the next minute or two we can  
22 define a couple of terms.

23 A. Yes.

24 Q. You used the phrase -- I think it was the  
25 phrase Defense Intelligence Agency. Can you tell the

1 court, please, just what that is and how it fits into  
2 the U.S. intelligence community.

3 A. Well, there are several major elements of the  
4 U.S. intelligence community, separate agencies that  
5 belong to different departments of government.

6 The CIA, of course, is a standalone agency  
7 which essentially serves the presidency, at that time  
8 we're talking about. The State Department has the  
9 Bureau of Intelligence and Research. The Defense  
10 Department has the Defense Intelligence Agency. And  
11 each of the services have activities, as do some other  
12 parts. And these things act as a committee of the  
13 whole, to a large extent, in coordinating what it is the  
14 positions are that they take with regard to the -- what  
15 the U.S. government accepts as truth.

16 They collect information for that purpose.  
17 They can analyze it by comparative analysis, as I heard  
18 described earlier. And then produce documents which  
19 become the truth of the United States government.

20 Q. Now, in terms of the intelligence work that you  
21 have done and that is done elsewhere in the United  
22 States government, there are, if I understand correctly,  
23 several different types of intelligence with names such  
24 as HUMINT and SIGINT. Can you explain please what some  
25 of those different categories are.

1           A.       These can really be described as disciplines in  
2     the collection world, which actually is divided into  
3     collection, analysis, dissemination. And these are  
4     different kinds of collections.

5                 SIGINT is the collection of enemy or adversary  
6     signals, both the verbal or of a nonverbal nature.

7                 HUMINT is the use of humans in order to collect  
8     information, either openly or by use of secret methods.

9                 IMINT is the use of photography or other kinds  
10    of imaging from overhead.

11                And MASINT is a little obscure even to me after  
12    I've worked with it for many years.

13                MR. WAX:   Okay.

14                THE COURT:   This is a good time. When you have  
15    your lunch, say to yourself "I'm going to speak a tiny  
16    bit slower."

17                (Lunch recess: 11:30 a.m. until 1:12 p.m.)

18                THE COURT:   Go ahead, Mr. Wax.

19                MR. WAX:   Thank you, Judge.

20    BY MR. WAX:

21                Q.       So, Colonel Lang, let us move forward with your  
22    experience. After your time in Yemen, did you continue  
23    with any other type of studies at the War College?

24                A.       Well, before that, I went back to the states,  
25    and for 8 or 10 months I was the person in charge of all

1 the attaché stations in the Middle East in the Defense  
2 Intelligence Agency's headquarters in Washington. In  
3 other words, I ran these places for administration and  
4 operations from Washington.

5 Q. And what does that job entail in terms of  
6 reviewing material, and analyzing it, making judgments,  
7 giving directives to people in the field?

8 A. Well, in addition to the logistical and  
9 administrative matters, personnel, things like that, I  
10 had to look at what they were producing in terms of  
11 reporting, and then go around to the other parts of the  
12 government that were interested in this, the State, CIA,  
13 and Treasury, places like that, and see if it was  
14 satisfactory, confer with them to get a kind of peer  
15 rating for the products of our attaché offices in the  
16 Middle East, and then retask them to have them do what  
17 it is that they were supposed to be doing.

18 Q. So you would gather information, make judgments  
19 about what was best, worst, mediocre?

20 A. Yes, judge it basically.

21 Q. And then would you discuss your analysis with  
22 other people who were doing work similar to yours within  
23 the intelligence community?

24 A. Well, first I would ask the analyst, the people  
25 who do comparative analysis, and within the DIA, that's

1 the Defense Intelligence Agency, and then I would ask  
2 the same questions out at all the other agencies to see  
3 whether there was a sufficiency in what was being  
4 reported, whether they thought it was any good, you  
5 know. And then retask people to get the -- to adjust  
6 the product in the collection activity if necessary.

7 Q. And retasking in English as opposed to a  
8 military phrase would mean what, sir? What do you mean  
9 by "retasking"?

10 A. Well, I'd send messages to the field and tell  
11 them to stop doing this, start doing that, that kind of  
12 thing.

13 Q. Were you in the mid 1990s at some point in a  
14 position in Saudi Arabia itself?

15 A. Yes. After I finished doing this for 10 months  
16 or so, I went back to the Middle East to Saudi Arabia to  
17 be the Defense and Army attaché, the job I had in Yemen  
18 only on a bigger scale because this was a bigger stage,  
19 bigger office, bigger embassy, bigger interests for the  
20 United States. And I was there for another  
21 two-and-a-half years.

22 And while I was there, I was promoted to  
23 colonel. And I performed the same kind of duties there,  
24 and with regard to collecting information, advising the  
25 ambassador, conferring with all the other foreign

1 attachés in the Saudi capital so that we could sort of  
2 support each other in the collection of information,  
3 judge what was to be done.

4 And then I was -- then I was selected to attend  
5 the Army War College in Carlisle, Pennsylvania, on my  
6 return to the United States.

7 Q. Let's just stay in Saudi Arabia for a moment.  
8 Did your work there bring you in contact with members of  
9 the Saudi royal family and the Saudi government?

10 A. Oh, yes. That was a very large part of what I  
11 was doing. In North Yemen, I had a lot of Russians,  
12 Chinese, and guerrillas to fool around with. In Saudi  
13 Arabia, the principal target of our efforts was the  
14 Saudi government itself, to find out what they were  
15 doing, to influence their actions, that kind of thing.  
16 So I spent a great deal of time in Riyadh, in the  
17 Ministry of the Defense, and Aviation, in the Foreign  
18 Ministry, or at the Justice Ministry sometimes because  
19 of American prisoners who had to be dealt with. And my  
20 Arabic was really quite good. And so -- actually it was  
21 better, really, than the State Department people, almost  
22 all of them in the embassy.

23 So I was often asked to go with the ambassador  
24 or other senior dignitaries to visit senior people in  
25 the Saudi government, provincial governors, ministers of

1 state, various royal princes. And often I acted as  
2 their interpreter because otherwise nothing would have  
3 gotten done. And visiting firemen as well. I remember  
4 an astronaut in particular that I took out to visit  
5 people.

6 I was also acting in conjunction with the CIA  
7 station there in the business of the clandestine  
8 intelligence, and I really can't go any further than  
9 that in an unclassified thing, but we had a very  
10 satisfactory outcome with regard to that.

11 Q. Okay. Now, you said that you came back and  
12 were at the War College. Tell us about that, please.

13 A. Well, the course is the senior most course for  
14 Army officers and other people from other services, few  
15 civilians who were sent there. It's for lieutenant  
16 colonels and colonels. The selection rate is 2 percent  
17 for those eligible in a given in year. So it's selected  
18 by national board. It's not something you apply for.  
19 And so it's a course on grand strategy, the management  
20 of Defense Department resources, some advanced business  
21 on international relations, subjects of that kind. I  
22 was there for a year.

23 Q. And when you concluded with that, was there a  
24 selection for promotion that you were told you weren't  
25 going to take because something else was going to happen

1 with you?

2 A. It wasn't a promotion. I was selected for  
3 brigade command, which was something I was very happy  
4 about, by an international board. And then I was told  
5 by the Department of the Army bureaucracy that I was not  
6 going to take command because I was too valuable doing  
7 what I was doing in the intelligence and the Middle East  
8 business. And that I could forget about that. I was  
9 going to stay as much as a specialist as I was.

10 And then I had a nice phone call from the  
11 director of the Defense Intelligence Agency, Lieutenant  
12 General James Williams, who asked me to take a very good  
13 job in DIA headquarters.

14 Q. And for the next seven years, give or take,  
15 what did you do, sir?

16 A. Well, the job -- and this is a job title rather  
17 than its description was to be the defense intelligence  
18 officer for the Middle East, South Asia in counter-  
19 terrorism.

20 And in that job, I controlled everything that  
21 DIA did with regard to those specific areas, the Middle  
22 East, South Asia in counterterrorism, everything in  
23 collection, in comparative analysis, in coordination  
24 with all the other parts of government, and in  
25 supporting our principal clients, who were the Joint



1 Chiefs of Staff. And in my case, specifically the  
2 Chairman, I was his personal liaison officer to the  
3 intelligence community, and the Secretary of Defense,  
4 first Caspar Weinberger, and then Frank Carlucci, and  
5 then Cheney. And I did that for seven years.

6 And in this job, my biggest position -- there  
7 was a whole board of defense intelligence officers for  
8 different subject matters, and we all worked directly  
9 for the director of DIA, had no other superior.

10 And the principal job was to lead analysis in  
11 the -- the strategic analysis of your field of endeavor,  
12 and to make judgments between different lines of  
13 analysis by a large number of analysts who are really  
14 scholars, really, who have high security clearances.  
15 And these people are very competent people. And they  
16 obviously will have differing opinions.

17 It was their job, the DIO, to decide amongst  
18 them as to which lines of approach were correct, which  
19 were not, and to help them develop those things, to  
20 approve all the documents and briefings, sometimes to  
21 give the documents and briefings. And to be the  
22 principal officer in Joint Chiefs of Staff planning for  
23 that area of the world or that function and also for  
24 being the principal officer for DIA participation in the  
25 formation of national estimates, which are the -- in the

1 intelligence community sitting as a whole deciding what  
2 it is that is the government's truth on a given subject,  
3 like the Palestinians or something like that.

4 Q. And when you said that that is a responsibility  
5 of the DIO, that was you --

6 A. That's me.

7 Q. -- DIO?

8 A. Yeah. I had that job for seven years. I was  
9 surprised when I was given that job because I had never  
10 really been an analyst before. I had always been a  
11 collector in clandestine operations, Special Forces  
12 operator in the field, infantry officer, things like  
13 that, and so I was surprised to do that. But it worked  
14 out very well.

15 If I hadn't been good at this and if my  
16 products had not been appreciated by the Secretary of  
17 Defense and Chairman of the Joint Chiefs, and all these  
18 other very senior persons, I would have been gone very  
19 quickly.

20 Q. And as you indicated, you served at least three  
21 different Secretaries of Defense?

22 A. Yes.

23 Q. You were continued on as they would take  
24 office?

25 A. Yeah, that's right. And since I dealt with

1    them almost everyday, they had plenty of opportunity to  
2    say if they didn't like it. All it would have taken was  
3    one phone call to the director of DIA. And -- but we  
4    went on quite nicely.

5           And in that period of time, we had our  
6    undeclared war with Libya, and we had the Iran-Iraq war  
7    in which the United States played a major role. Can't  
8    say too much more about that. Then we had the First  
9    Gulf War. And then I survived through all of that in  
10   this function.

11       Q.     Now, during the course of your responsibilities  
12    as the DIO, would you from time to time participate in  
13    personal briefings of the President of the United  
14    States?

15       A.     I did, in fact. And when George H.W. Bush was  
16    president, I briefed him half a dozen times in the time  
17    of Desert Storm, the First Gulf War. I had briefed  
18    President Reagan several times before that. And I never  
19    got around to President Clinton. I had moved on to  
20    something else about that time. But I did that quite  
21    often.

22           I used to also brief foreign leaders a great  
23    deal. I briefed King Abdullah of Saudi Arabia several  
24    times, and his predecessor, King Fahd. I briefed Prince  
25    Saud Faisal, the Foreign Minister of Saudi Arabia; Turki

1 Faisal, the former head of General Intelligence in --  
2 you need some spellings?

3 THE REPORTER: I'll get them.

4 A. Yeah. And I used to go over to Jordan and  
5 brief His Majesty King Hussein and various officials  
6 over there, other people around the Arab world.

7 Q. And in your briefings, you would be providing  
8 to these people, as well as the Secretaries of Defense  
9 and the Chairman of the Joint Chiefs, your assessment on  
10 a variety of matters related to terrorism, counter-  
11 terrorism, and some of the more specific subjects that  
12 you've already mentioned?

13 A. Yes. In addition to all the specific things on  
14 the Middle East and all the things that were happening,  
15 you know, there is always something happening in the  
16 Middle East, you know, the counterterrorism thing, for  
17 which we had a large analytic staff was a big subject  
18 for me. Altogether I was supervising the work of about  
19 130 analysts in grades up to GS15, that's like a colonel  
20 in the Army, you know. And we did that all the time.

21 Counterterrorism was a big subject. We had a  
22 lot of activity in that time. There was a lot of  
23 activity with the Abu Nidal organization, and the  
24 Popular Front for the Liberation of Palestine, and its  
25 variant, the General Command; the PLO, the -- and

1 various organizations like that. They were all the  
2 focus of our attention all the time.

3 Q. Sir, did you retire from active military  
4 service during the period that you were serving as the  
5 DIO?

6 A. Yes. I got a very good break. I -- in 1988,  
7 the director of DIA -- I found out I wasn't going to get  
8 promoted in the Army because they didn't want to promote  
9 anybody who was a specialist in the Middle East, so the  
10 director of DIA asked me if I would stay on as a  
11 civilian if he made this a job in the Defense  
12 Intelligence Senior Executive Service. And I said, yes,  
13 I'll do that. So they got permission from the Congress  
14 for that. And I signed out of one thing and into the  
15 other the same day.

16 Q. And in terms of the equivalency of the rank  
17 that you held after you resigned, would that relate in  
18 any way to a rank within the military?

19 A. I was promoted several times in the Senior  
20 Executive Service, and I ended up as an MP-4, which  
21 is -- an EP-4, Executive Program 4, which is the  
22 equivalent in the Armed Forces of a lieutenant general.

23 Q. And were there any other honors or distinctions  
24 that came your way in that period?

25 A. Yes. I was -- I was awarded the Presidential

1 Rank of Distinguished Executive, which is the highest  
2 award you can -- the highest professional award you can  
3 be given in the Civil Service of the United States.

4 Q. And that was awarded by which president?

5 A. President G.H.W. Bush.

6 Q. Now, when you left the DI -- your service at  
7 the DIO, you took up another position within the  
8 government?

9 A. Yeah. After seven years, we had a new director  
10 in DIA. And he decided that a lot of people had been in  
11 the same jobs too long, so he asked me if there was  
12 another job I'd like. So I said I'd like to go be the  
13 director of Defense HUMINT Collection. So they sent me  
14 over there. And I did that for two years.

15 Q. What generally did that job entail?

16 A. Well, it was really the kind of thing I really  
17 like. I was in charge of all the attachés, military  
18 defense, naval and air attachés in the world, and  
19 everything they did.

20 And also I was in charge of all the clandestine  
21 assets of the Defense Department. I had the chance to  
22 reorganize them all into one service, the Defense HUMINT  
23 Service. And then I had a lot of little detachments  
24 that -- bought foreign equipment for reverse engineering  
25 and various other specialized jobs like that.

1 Altogether a couple thousand people.

2 Q. Okay. You left government service in 1994 --

3 A. Yes.

4 Q. -- and took a position in private industry?

5 A. I did. By that time I had had 32 years of  
6 government service, and I thought I should do something  
7 different. So I floated by résumé around and I received  
8 a number of offers. And I took the one that looked the  
9 most interesting and had the most money attached to it.  
10 And I went to work as a corporate executive for a  
11 Lebanese man who owned a large group of companies in the  
12 Middle East that made construction materials,  
13 principally pipe.

14 Q. And you stayed in that position more or less  
15 full-time for roughly seven years, was it?

16 A. Well, I worked really full-time at that until  
17 2000, yes. And then I decided I would like to cut back,  
18 so I became a member of his board of directors and a  
19 consultant to the company doing business development,  
20 government relations work, and contract negotiations in  
21 the Middle East. And they found it useful to have this  
22 American go around and deal with situations which the  
23 various Arab groups couldn't agree with each other. And  
24 so I did that until 2006. And during that period --  
25 then I stopped working with them.

1           During that period, I started developing a  
2 private consultancy with the government, principally,  
3 because I was no longer an employee of that company, so  
4 I started working for the government again.

5           Q.       So in terms of the work with the corporation --  
6 and this is FMS, Incorporated?

7           A.       Yeah, it's Future Pipe Group really is the name  
8 of the group there.

9           Q.       Roughly how much of your time, if any, did you  
10 spend in the Middle East from 1994 to roughly 2000,  
11 2001?

12          A.       Well, when I first went to work for the  
13 company, I went out and lived in Dubai for six months to  
14 become -- there was a big factory there, so I wanted to  
15 become familiar with the manufacturing process. And so  
16 I did that. Then I came back to my home. And I -- we  
17 set up offices in Washington. And I ran a subsidiary of  
18 the company out of it for the same things, for business  
19 document, government relations, and contract  
20 negotiation. And then eventually we started building  
21 factories in the United States in the Gulf Region.

22          Q.       Did you continue to travel to the Gulf of the  
23 Middle East up until 2000 when you stopped your  
24 employment?

25          A.       I did. I would go -- every two months or so, I



1 would go for a week or two out to the Gulf, to Saudi  
2 Arabia, to everyplace out there, Egypt where we had  
3 business. And I did a lot of work in Saudi Arabia in  
4 the Gulf because there is a big market there, and we had  
5 several factories in the Gulf. And I would -- spent a  
6 lot of time cultivating sources among the people I  
7 already knew in the Saudi government establishment; and  
8 then new people, bankers, businessmen, lots of business  
9 with fixing contracts, and watching how they did things,  
10 and doing financing jobs for particular contracts with  
11 their banks, things of that kind.

12 Q. So in that roughly six, seven-year period, you  
13 maintained the contacts that you had had with people who  
14 were in government when you were working with the United  
15 States government?

16 A. And I built up a lot more.

17 Q. More contacts?

18 A. Yeah.

19 Q. You also functioned directly as a business  
20 executive in, as you've indicated, a number of the  
21 Middle Eastern countries, including Saudi Arabia?

22 A. Yeah, most particularly in Saudi Arabia, yeah.

23 Q. And you became familiar with some of the Saudi  
24 business practices through that personal experience?

25 A. I used to watch them all the time. Before I

1    went into business in the Middle East, I thought I knew  
2    a lot about how Arabs functioned in business and  
3    government and things like this. And once I started  
4    functioning in business as one of them, I found out I  
5    had a lot more to learn. So there were a lot of things  
6    to learn in those six years.

7       Q.     Now, let me just ask a little bit about the  
8    types of information that you would have access to and  
9    be dealing with in your analysis. And if we need to go  
10   into a closed session or you need to stop your answers,  
11   just keep your eye on that ball, please.

12            In terms of attempting to determine what was  
13   going on in Saudi Arabia --

14       A.     Among other places.

15       Q.     Well, let me focus on Saudi Arabia for a  
16   moment. Did you develop an understanding through your  
17   work with the government the way in which the Saudi  
18   government functioned and the type of control it exerted  
19   over institutions -- charitable institutions in Saudi  
20   Arabia?

21       A.     Yes. I mean --

22           MR. GORDER: Your Honor --

23           THE COURT: Just a moment.

24           MR. GORDER: Your Honor, if I could object and  
25   ask for some clarification as to where we're headed.

1 Mr. Lang has been proffered as an expert to testify at  
2 the trial. I fail to see the relevancy of U.S.  
3 government collection efforts in Saudi Arabia to this  
4 trial that we are going to try next month. And whether  
5 he's an expert on that or not, seems really beside the  
6 point.

7 THE COURT: Yeah. I'll give my rulings on  
8 those matters later. As long as you stay away from  
9 things that can't happen in open court, that's fine.  
10 I'm going to let you do it.

11 MR. WAX: Thank you.

12 THE WITNESS: Well, yes, we were very  
13 interested in how the Saudi society functioned, because  
14 it's a major ally of the United States. That's when I  
15 was in government. And so, in fact, we applied all of  
16 the collection means of the U.S. government, used all  
17 the experts, and all the analytic talent we had to build  
18 up as comprehensive a picture as we could of how they  
19 functioned.

20 Among the various things would be how the  
21 governmental entities and the royal family, who really  
22 own Saudi Arabia, how they controlled all these  
23 entities, like al-Haramain and the Saudi Joint Relief  
24 Committee, things of that kind, because they were very  
25 concerned with in fact maintaining absolute control so

1 that nothing went wrong in their relations with the  
2 United States, for example. Is that your question?

3 BY MR. WAX:

4 Q. Yes. So in terms of the work that you were  
5 doing and the expertise that you developed, that  
6 included, I take it, expertise in the relations of the  
7 Saudi government with the various entities that existed  
8 in Saudi Arabia?

9 A. Yes. As a major player in the American  
10 intelligence community, we were not just interested in  
11 military things, we were interested in a comprehensive  
12 picture of all the aspects of Saudi society,  
13 governmental, nongovernmental. We wanted to know what  
14 made them tick and exactly how they functioned.

15 Q. In terms of your development of expertise with  
16 respect to mujahideen and the funding of mujahideen, did  
17 your work take you into those areas?

18 A. Yes. We were -- the United States government  
19 has always had a certain problem in distinguishing  
20 between mujahid groups who are in one sense can be  
21 thought of as fighters for liberation in some contexts,  
22 and terrorist groups in another sense who are often  
23 extremist Islamic groups. So we were very interested in  
24 developing as big a database, often interacting with  
25 civilian people's databases, as to exactly what the

1 layout was of all these groups and how they interacted.  
2 And I was in charge of that in the Department of  
3 Defense. And I went to all of the meetings in the --  
4 across the intelligence community in which these matters  
5 were discussed and decided upon.

6 Q. Let's look at the last 10 years or so of your  
7 work since you began serving as a consultant. If I  
8 understood correctly, you said that you have continued  
9 to work for the United States government but in a  
10 consulting capacity?

11 A. Yes.

12 Q. Did I understand correctly?

13 A. You understood correctly, yeah.

14 Q. Could you please explain to us in as much  
15 detail as you can the nature of your consulting work for  
16 the government over the last 10 years or so.

17 A. Well, I'm a well-known figure in the world of  
18 military affairs and the Middle East and counter-  
19 terrorism in the United States government, and amongst  
20 contractor companies that support the government in  
21 these endeavors. So starting seven or eight years ago,  
22 I began to get more and more offers to work for various  
23 contracting companies or parts of the government itself  
24 for short periods of time, three or four days, two  
25 weeks, a month, something like this, in specific

1 planning scenarios for the Middle East, in war gaming,  
2 both political and military, and in writing various  
3 things for them.

4 For example, myself and several associates  
5 wrote a book on the Bedouin tribes of the Al-Anbar  
6 Governorate in Iraq for the Defense Intelligence Agency  
7 in 2006, which has become -- it's a classified document.  
8 The title is not. But it's -- but it was -- it's been  
9 an important document in the war in Iraq. And any  
10 number of other projects like that.

11 I have several ongoing at the present time.  
12 And I have a security clearance at present, which is  
13 secret. Before, I had a security clearance for a  
14 special compartment of intelligence, and with a whole  
15 lot of compartments in it. And -- but at present it's  
16 secret because my work has not required anything more.

17 Q. Have you done work consulting for both the Bush  
18 and Obama administrations in the twenty-first century, I  
19 guess we're in?

20 A. Oh, yes, to both. It doesn't matter to me, of  
21 course, which party is in power, but, yes, in fact --

22 Q. Both have called you back and called on your  
23 expertise?

24 A. Yeah, the government has, yes.

25 Q. Okay. Now, in terms of writing, we have in

1 your CV a number of articles. I just want to draw your  
2 attention to a couple of them. There is the book listed  
3 *Intelligence: The Human Factor* published in 2004?

4 A. Uh-huh, that's correct. That was cleared by  
5 DIA. And that is written on historical examples and it  
6 is kind of primer in espionage.

7 Q. *The Tribes of the Al-Anbar Governorate*  
8 published in June of 2006?

9 A. That's the one I just mentioned.

10 Q. All right. An article entitled "Drinking the  
11 Kool-Aid, Middle East Policy," 2004, does that discuss  
12 anything about goings-on in Saudi Arabia and/or funding  
13 of --

14 A. No. This is -- this is about the intelligence  
15 contest over -- and the run-up to the war in Iraq.

16 Q. Okay. "Wahhabism and Jihad" published 2003,  
17 subject matter of that would be what?

18 A. That would be specifically the role and  
19 function of the Wahhabi, that brand of Islam within  
20 Saudi society and the effect that it's had in sculpting  
21 Saudi society over the last 100 years or so.

22 Q. Another "Al-Qaeda and the Jihadis,"  
23 September 2006, subject matter of that?

24 A. Basically Islamic terrorism.

25 Q. And "Islam: Monotheistic but not Monolithic,"

1 January 2007?

2 A. Yes. That's a -- I wrote that for the Catholic  
3 people charities for the Middle East, they wanted an  
4 encyclopedic view for their magazine, you know, the  
5 various types of Islam, and the basic tenets. So it's  
6 a -- kind of a tour d'horizon. T-O-U-R, D, apostrophe,  
7 H-O-R-I-Z-O-N.

8 Q. Have you, in addition to providing input to  
9 members of the Executive Branch been called upon by  
10 Congress to testify as an expert before any number of  
11 Congressional committees?

12 A. I haven't done that very much since I left the  
13 government, but when I was in government, I testified 3  
14 or 400 times before the Oversight Committees, the Armed  
15 Forces Committees, the Appropriations Committees, the  
16 Foreign Affairs Committees. That was one of my major  
17 jobs.

18 Q. Since you left the government service and also  
19 since you left the corporation, have you testified as an  
20 expert witness in any federal courts?

21 A. Yes, I have. I testified in 2003, I think, in  
22 a civil action in the District Court of the District of  
23 Columbia before Judge Royce Lamberth in a case involving  
24 a number of plaintiffs against the government of Iran  
25 for material support of terrorism involving Meir



1 Kahane's murder.

2 And last week, I testified in another civil  
3 action in the same court before another judge, whose  
4 name I don't remember exactly. And it was against the  
5 government of Syria for material support of terrorism in  
6 a couple of incidents that occurred back in the late  
7 1980s. And the victims were suing for damages against  
8 Syria.

9 And there have been about six or seven other  
10 cases involving a mass murder in the Dallas area by a  
11 strange young man. And a number of habeas court cases  
12 involving Guantanamo people.

13 Q. And in some of those habeas cases, while you  
14 have not testified, have you provided declarations and  
15 been accepted as an expert by the courts?

16 A. All of them.

17 Q. Okay. Now I'd like to ask you specifically  
18 about Chechnya for a moment. And if you can tell us  
19 whether or not during the course of your work for the  
20 government and out of the government you've developed  
21 any familiarity and expertise about Chechnya.

22 A. Well, as a full-time government and Army  
23 specialist in the Islamic countries, which is what I  
24 was, and then the head of all that kind of business in  
25 the Defense Intelligence Agency, the -- rather the

1 states and areas marginal to the Arab Islamic world,  
2 like the states in the Caucasus, and Central Asia, way  
3 down in Africa, were always of great interest to me  
4 because they were part of the orbit of Islamic affairs,  
5 and my work intersected with that of my colleagues who  
6 were the DIOs for the Soviet Union, for example. And so  
7 these areas were always the subject of great discussion,  
8 and with regard to all the papers that were written  
9 within DIA and the intelligence community. And I  
10 participated in all those discussions.

11 I don't claim to be an expert specifically in  
12 the Caucasus, but this was always a matter of which I  
13 took great care to inform myself.

14 Q. During the course of your work, both within the  
15 government and subsequently, have the opportunity to  
16 work with or receive information from what is now the  
17 FSB, Russian Security Service?

18 A. Because I was a clandestine intelligence  
19 officer for many years in different places, often the  
20 targets were members of the KGB and then GRU and  
21 officers of that kind. And I had long experience in  
22 dealing with them in the field. And then in DIA  
23 headquarters, they were the object of great concern to  
24 us because of their activities in the kinds of areas you  
25 are talking about.

1           And I find it very hard to believe -- this is  
2 my opinion -- that the FSB is a great deal different  
3 than the KGB. And I would cite that incident that  
4 occurred with regard to an American diplomat stationed  
5 in Mexico who was honey trapped in Moscow by the FSB.  
6 And it was widely written up in the newspapers, and this  
7 is last year, I believe.

8           Q.       Have you had the opportunity in the last few  
9 years to discuss with any of your colleagues, former  
10 colleagues, what is going on currently with the FSB and  
11 get any input from any of those people about their views  
12 of the FSB?

13          A.       Because of my ongoing consulting business for  
14 the government, and when I go to events for which I've  
15 been hired by the government, there are colleagues there  
16 who are old colleagues of mine, there are people who  
17 currently work in the government who are very current in  
18 these things, and I don't hear any great level of trust  
19 expressed by them for the FSB and its veracity in  
20 matters in which the interests of the Russian State  
21 might conflict with the truth.

22          Q.       And the people with whom you are having these  
23 conversations are the same type of people on whom you  
24 would have relied in your work as the DIO, and then as  
25 the director of HUMINT?

1           A.       Oh, yes. Same level, same kind of people, same  
2 agencies.

3           Q.       Now, in terms of this particular case, we  
4 contacted you now quite some time ago, and you provided  
5 two declarations that are not classified in any way, one  
6 related to the FSB, the other related to the types of  
7 information that should be available in this court. And  
8 you more recently provided a declaration that was  
9 prepared in a classified setting, correct?

10          A.       Yes.

11          Q.       All right. We provided you some materials in  
12 order for you to provide some assistance, and let me see  
13 if I can quickly review that. Did we provide you a copy  
14 of the indictment?

15          A.       Yes.

16          Q.       You read it and understood the nature of the  
17 conspiracy and tax charges and the El-Fiki donation,  
18 et cetera?

19          A.       Yes, very, I do.

20          Q.       Have we provided you a set of all of the  
21 exhibits that the government has marked, at least those  
22 up until, I guess, last Friday, I think we provided you  
23 copies, did we not?

24          A.       Yes.

25          Q.       And did we, over the weekend, have the

1 opportunity for you to look at some new exhibits that  
2 the government marked toward the end of last week?

3 A. Yes, at your offices here.

4 Q. Did we also provide you with a full set of the  
5 materials that we have marked as potential defense  
6 exhibits?

7 A. Yes.

8 Q. Have we, in addition, provided you some other  
9 reports, witness interviews, et cetera, prepared by the  
10 FBI and the IRS related to the investigation which has  
11 been conducted in this matter?

12 A. Yes.

13 Q. In terms of the understanding that you have of  
14 the issues here, I'd like to ask you a couple of  
15 questions. In attempting to determine the -- let's  
16 start with the money, what happened to the money that  
17 was originally donated by Mr. El-Fiki, what would you --  
18 I'm going to ask this one of several ways. What would  
19 you have done had you been in a position to be  
20 attempting to determine that? What, given your years of  
21 experience with the government, would you have expected  
22 the government to do in the effort to determine what  
23 actually happened with the El-Fiki money?

24 A. You mean once it got to Saudi Arabia?

25 Q. Yes.

1           A.       A couple of things. I would have, first of  
2 all, gone and tuned up the collection apparatus of the  
3 U.S. government, especially in a Signals Intelligence  
4 area, to have them collecting against the kind of  
5 information you wanted.

6                   The transfer of funds in -- across  
7 international banking boundaries and things of that kind  
8 anyway are the kinds of transactions which are readily  
9 accessible to the United States government.

10                   The second thing I would have done is I would  
11 have gone to Saudi Arabia, and I would have spoken  
12 directly to the really responsible officials who sat on  
13 the boards of these institutions, at al-Haramain and the  
14 Saudi Joint Relief Committee, who are really -- a lot of  
15 them are very senior people in the Saudi government and  
16 royal family. And I see no reason why they would have  
17 thought it would not have been the right thing to do and  
18 in their interest in order to describe what happened to  
19 the money. And I don't know whether or not that was  
20 done, but I don't see any evidence of it having been.

21                   MR. WAX: Your Honor, I think the next  
22 questions that I want to ask may need to be asked in a  
23 less populated courtroom.

24                   THE COURT: All right. How much more do you  
25 have?

1 MR. WAX: Maybe 20 minutes total.

2 THE COURT: Yeah. I'm not sure you have that  
3 much time left but you have some time. So let's --  
4 that's fine. We'll have a secure courtroom. So those  
5 who don't have the proper clearance, I need to ask you  
6 to leave.

7 MR. WAX: Your Honor, with respect to  
8 Mr. Casey, he has a clearance through the Guantanamo  
9 work. He has not yet had a need-to-know order entered  
10 in this case. What is your pleasure with respect to  
11 him?

12 THE COURT: I'm sorry, Mr. Casey, but I don't  
13 want to take any chances.

14 MR. CARDANI: Judge, I'm sorry, can Evan  
15 Kohlmann return back to New York?

16 THE COURT: As far as I'm concerned, yes. Do  
17 you want him here this afternoon?

18 MR. WAX: Unless the court intends to permit me  
19 to ask more questions --

20 THE COURT: I don't.

21 MR. WAX: -- there wouldn't be any point in him  
22 staying. But if you do, I would love that opportunity.

23 THE COURT: All right. Thank you. Okay.

24 (Further proceedings were held in a closed  
25 session and are bound under separate cover or are not

1 transcribed.)

2 (Proceedings resume in open court at 2:25 p.m.)

3 THE COURT: Thank you. I did want to tell  
4 counsel that I've scheduled time in the next few weeks  
5 to do another personal complete review of all the  
6 classified materials in the case.

7 Are you finished with the witness?

8 MR. WAX: Yes, Your Honor. And before  
9 Mr. Slade leaves, I have an envelope that I should  
10 probably return to him.

11 THE COURT: Thank you. Let's give it to him  
12 now. That's great.

13 MR. WAX: Thank you.

14 THE COURT: Thank you, Mr. Wax. All right.  
15 Mr. Gorder.

16 MR. GORDER: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. GORDER:

19 Q. Mr. Lang --

20 A. Excuse me, sir, I'm a retired regular Army  
21 officer with the grade of colonel. I would appreciate  
22 it if you would address me by my rank.

23 Q. Very well. Colonel Lang, you left Saudi Arabia  
24 in 1985.

25 THE REPORTER: Excuse me, is your microphone



1 on?

2 MR. GORDER: Is that better?

3 THE REPORTER: Thank you.

4 BY MR. GORDER:

5 Q. You left Saudi Arabia in 1985?

6 A. Yes, I believe that -- either '84 or '85.

7 Q. And as far as while you were in government  
8 service, you were not stationed there after that date;  
9 is that correct?

10 A. No. But I've been there many times. Would you  
11 like me to say how?

12 Q. No, that's fine.

13 A. Okay.

14 Q. You left government service in 1994; is that  
15 correct?

16 A. That is correct, July, something like that.

17 Q. Now, the work you did for FMS, Incorporated,  
18 you indicated that that was primarily a company that  
19 sold pipe throughout the Middle East; is that correct?

20 A. Yes. I also set up and ran the owner's family  
21 foundation, yeah.

22 Q. What kind of piping are we talking about?

23 A. We're talking about ferroconcrete pipe in  
24 dimensions up to three meters, and various kinds of  
25 fiberglass pipe in diameters up to five meters for

1 applications in the municipal water -- sewage and water  
2 flowing business, in the petrochemical industry, in --  
3 and in oil field operations. We also have an  
4 engineering company that did a complete lay-down of the  
5 system for you, built all of the joints and phalanges  
6 and things and all that.

7 Q. Okay. Now, in connection with that, you didn't  
8 do any studies of Islamic charities; is that right?

9 A. Not in that period of time, no.

10 Q. So from 1994, you haven't studied that issue?

11 A. No, that's not correct. The Middle East is my  
12 business and the Islamic world is my business. And I  
13 have continued to study and sought to improve myself in  
14 this field for my whole life.

15 Q. And what -- have you published anything in that  
16 regard?

17 A. Yeah. Mr. Wax mentioned several articles that  
18 I have published in places. I will say, I mean, I'm not  
19 a scholar, as Mr. Kohlmann is. I'm a professional  
20 intelligence officer. And if the issue of peer review  
21 arises, professional intelligence officers don't do peer  
22 reviews in the same way that scholars do. In fact, we  
23 do it by a comparison of work amongst ourselves, amongst  
24 colleagues, and across the community.

25 Q. And the articles that you mentioned with

1 Mr. Wax, which ones of those deal with Islamic  
2 charities?

3 A. I don't think there are any that deal  
4 specifically with Islamic charities, no.

5 Q. Have you published anything about al-Haramain?

6 A. No, I have not.

7 Q. In the time that you worked for the government  
8 through 1994, did you have any occasion to study the  
9 activities of al-Haramain?

10 A. Certainly. Because they were part of the total  
11 galaxy of activities that were suspected by the  
12 government of the United States as being in support of  
13 Islamic terrorist activities everywhere. But once  
14 again, you don't publish things for the general public  
15 in the intelligence community. You publish them for the  
16 government.

17 Q. When was al-Haramain started?

18 A. I don't remember.

19 Q. Have you published anything about Chechnya?

20 A. No, I have not.

21 Q. And after you left the government in 1994, did  
22 you do any studying of the conflict in the Caucasus?

23 A. Yes, I did. I read many things about it, and I  
24 have taken a continuing interest in the development of  
25 the conflict there from the point in time of which the

1 leadership of the Chechen movement were either Sufis of  
2 the Naqshbandi order or former Soviet military officers.  
3 And gradually over the years they came to be replaced,  
4 in large part, by Wahhabi agents and various kinds of  
5 takfiri jihadis. Yes, I've kept track.

6 Q. Okay. Who is Ibn Khattab?

7 A. He's one of the leaders of the movement there.

8 Q. And what is he doing today?

9 A. Oh, I don't know. If you are going to -- want  
10 to ask me things at that level of detail, I'm not going  
11 to be able to answer your questions. But, in fact, the  
12 issue here, as I understand it in this trial, is what  
13 happened to the money once it got to Saudi Arabia and  
14 where did it go? Did it go to support a militant  
15 jihadism in Chechnya? Not what the order of battle is  
16 of the Chechen guerrillas.

17 Q. Okay. I'm just trying to ascertain your  
18 expertise in --

19 A. I'm not -- that's fine. I --

20 Q. -- the Caucasus.

21 A. Yeah.

22 Q. During the time that you worked for the Defense  
23 Intelligence Agency, did you work with the FBI in their  
24 law enforcement function?

25 A. No. I generally worked with them in their --

1 when I did work with them, it was in their counter-  
2 intelligence function, and that side of the Bureau. And  
3 they're not very easy to work with most of the time.

4 Q. So you would not say you have an expertise in  
5 how the FBI collects information inside the United  
6 States?

7 A. No, that's not true at all. I've participated  
8 in many discussions about this. And I've now  
9 participated in so many of these court cases that I have  
10 read a great many of their reports. And it's very easy  
11 to see how they do this.

12 In this case in Dallas that was mentioned  
13 involving Smadi who the FBI recruited to blow up an  
14 office building, in fact, I reviewed all the videotapes  
15 of the entire process of recruitment, training, and  
16 execution of the pseudooperation, I've paid a lot of  
17 attention to how they collect these -- collect things.  
18 I think they do it very well.

19 Q. You indicated that you testified in a couple of  
20 cases in 2003 that would involve civil actions; is that  
21 correct?

22 A. And last week.

23 Q. And last week. What was the nature of your  
24 testimony? What was the subject matter?

25 A. Well, in the case of the -- in both cases, it

1 had to do largely with -- in addition to my general  
2 understanding from my supervisory role in the analysis  
3 of the actions of the Iranian and Syrian governments in  
4 support of terrorism at those times, in the case of the  
5 case against Syria, I was personally a participant in  
6 the day -- in this thing the day that it occurred in  
7 that I was called into the office of the Chairman of the  
8 Joint Chiefs of Staff, Admiral William Crowe, to  
9 translate for him the conversation he was having on the  
10 telephone with the Egyptian officers on the airfield in  
11 Malta where the aircraft was stormed by Egyptian  
12 commandos, so I was actually a kind of witness to that.

13 Q. And what was the time frame of that?

14 A. That particular thing was the 23rd of  
15 November 1988.

16 Q. And the case involving Iran --

17 A. You mean when was the occurrence?

18 Q. Yes.

19 A. I don't remember when Meir Kahane was murdered.  
20 It was -- I just don't remember. This was quite a while  
21 ago now.

22 Q. But before you left government service?

23 A. Did it occur before I left government service?

24 Q. Yes.

25 A. I don't remember that, if it was or not.

1 Q. And in the case last week, what was that about?

2 A. I just told you. It was about the hijacking by  
3 the Abu Nidal group of an EgyptAir airliner en route  
4 from Athens to Cairo and its diversion into Malta where  
5 it sat on the ground for a while. And the hijackers  
6 killed several Americans or tried to -- they killed one  
7 American and tried to kill two more. And the Egyptians  
8 brought in a lot of commando troops. And after some  
9 hours of procrastination, they decided to assault the  
10 airplane and they killed 60 people.

11 Q. Maybe I misunderstood you. I thought that was  
12 a case that you testified in 2003?

13 A. No. That was -- the case in 2003 had to do  
14 with the culpability of the Iranian government in  
15 material support of the terrorists in New York who  
16 murdered Meir Kahane and killed several other people who  
17 happened to be on the scene.

18 Q. Okay. That murder occurred late '80s, early  
19 '90s sometime?

20 A. I really don't remember. I wouldn't want to  
21 mislead you.

22 Q. Have you done any studies of pro-Chechen  
23 material?

24 A. Only in the materials that have been sent to me  
25 by the defense that were found, I guess, in -- on the

1 scene somewhere.

2 Q. But no others?

3 A. No. I'm not terribly interested in the  
4 propaganda of Islamic militant groups.

5 Q. Are you familiar with the Benevolence  
6 International Foundation?

7 A. The what?

8 Q. Benevolence International Foundation.

9 A. I'm sorry, I'm getting deaf, I guess. I really  
10 couldn't hear that.

11 THE COURT: Benevolence International  
12 Foundation.

13 THE WITNESS: No, I am not familiar with them.

14 BY MR. GORDER:

15 Q. The Global Relief Foundation?

16 A. No.

17 Q. Do you know who Enaam Arnaout is?

18 A. What's the name?

19 Q. Enaam Arnaout. Now, I may be mispronouncing  
20 that.

21 A. No, I don't know who that is. I do not know  
22 who that is.

23 Q. During your time up through 1994, did you work  
24 with the IRS in their law enforcement function?

25 A. No.



1 MR. GORDER: Nothing further, Your Honor.

2 THE COURT: Thank you. Thank you, sir. You  
3 may step down.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: Counsel, many of the other matters  
6 before the court are motions that are typical in these  
7 cases, and I have ideas about how they'll be decided  
8 already. If there is a particular one that you wish to  
9 add more discussion today, you may.

10 The other thing is that I understand that  
11 today, I didn't really have a long conversation on this,  
12 but some of the government's exhibits are going to be  
13 withdrawn or replaced. So I'd like to make as clear a  
14 record in that regard.

15 I have reviewed the objections that the parties  
16 have made to exhibits, and I am ready to rule on those,  
17 but I'm going to do so in the form of a minute order.  
18 But if there are other -- I'd like to know what is the  
19 state of the exhibits right now so that I can give you  
20 rulings on most of the exhibits before trial.

21 And I will tell you, since I'm doing it before  
22 trial, if there are some that there is a -- that's  
23 indicated that someone is going to be called to provide  
24 a foundation and there is not agreement on foundation,  
25 and if that person is not called, then I can be asked to

1 reconsider that ruling at the trial. In other words, if  
2 you agree on foundation, no; but on the other hand, if  
3 there is not agreement and the foundation of a witness  
4 is not called by the party who's the proponent of the  
5 exhibit, then you can give a -- the other side can ask  
6 that I reconsider my ruling. But I'm going to try to  
7 give you advanced rulings so your game plan can be quite  
8 organized before we start the trial because when we  
9 start, we're going to move right along.

10 So are there other matters that you want to  
11 give me some argument on?

12 MR. CARDANI: May I have a moment, Your Honor?

13 THE COURT: Yes.

14 (Discussion held off the record.)

15 THE COURT: Okay. Actually, I hadn't seen  
16 this, but I've been busy trying to listen to your other  
17 thing. Apparently, I do have a list provided that  
18 certain exhibits are withdrawn by the government and  
19 certain ones are added. And have you informed defense  
20 of which witnesses -- or which exhibits have been  
21 withdrawn?

22 MR. CARDANI: Yes, Your Honor. That same list  
23 was provided to Mr. Wax with a full set of changes. And  
24 by way of background, when we met -- we met in Portland  
25 for the better part of a day, the defense and us. A lot

1 of the government's exhibits contain surplusage at the  
2 bottom. You run something off the printer, it has some  
3 extra stuff that we had to scrub. So the bottom  
4 category there, we had to do a lot of work.

5 THE COURT: Where changes are made.

6 MR. CARDANI: Pardon?

7 THE COURT: Where it says changes made to  
8 exhibits.

9 MR. CARDANI: Yes, Your Honor, by and large  
10 that's what that was done for.

11 Certain exhibits we've reconsidered and  
12 withdrawn, as we've noted. And others we have added.  
13 We've provided those to the defense. By and large these  
14 are the ones that have been in their possession for  
15 quite some time. And so that list right there is  
16 accurate through today.

17 There'll be a few exhibits along the way, we  
18 anticipate minor changes along the way, we may have some  
19 additions. But this brings us up to speed.

20 The defense was provided with all this stuff.  
21 We've updated the court's books. Special Agent Anderson  
22 did that today and updated the court's books. So we  
23 should all be on the same sheet with respect to this  
24 list.

25 THE COURT: Mr. Baker, I didn't try to remember

1 exhibit numbers and so on when I was reviewing this this  
2 weekend. Do you know whether -- well, Mr. Wax has -- do  
3 you have objections to any of those that are under the  
4 category "exhibits added"? And have you given me those  
5 objections?

6 MR. WAX: I believe we got these on Friday,  
7 Your Honor. And I looked at them yesterday. We will  
8 have some objections. We have not been able to put that  
9 together. We do have a number of other exhibits that  
10 we've identified that up to now that we intend to offer.  
11 I've just not had the time to get those into a  
12 supplemental list and get copies to the government.  
13 We'll try to get that done this week.

14 THE COURT: All right. Get me any objections  
15 you have this week also, please.

16 MR. WAX: Yes, we'll do so.

17 THE COURT: All right. Anything further?

18 MR. WAX: Yes, Your Honor, a couple of things,  
19 if we could, please.

20 THE COURT: You may.

21 MR. WAX: First is a ministerial type question.  
22 As we read the court's minute order, we understood that  
23 you wanted exhibits in folders.

24 THE COURT: Yes.

25 MR. WAX: And we provided you notebooks. I did

1 bring down a set of the exhibits. We had previously  
2 marked each one divided out in a folder, which, if you  
3 would still like those, we would like to leave them with  
4 you today.

5 THE COURT: We try to do that with our -- sort  
6 of our record exhibits. And then the reason they are  
7 useful for us -- the books can work too, but as you  
8 know -- well, if you don't, you will find out, that I  
9 want to know at least on a daily basis which exhibits  
10 you intend to use with a witness so that when the  
11 witness takes the stand, those exhibits can be in the  
12 folders on the -- at the stand with them, and so we  
13 don't waste time fumbling for exhibits.

14 MR. WAX: We will leave those before we leave.

15 THE COURT: Thank you. That's what they are  
16 for. I think Ms. Mermis may have started that. It  
17 works pretty well, so.

18 MR. WAX: Okay. In terms of the exhibits that  
19 we have marked, we noted in our pleading portion of the  
20 exhibit list, that we distinguish between exhibits that  
21 we are offering in something akin to a case in chief and  
22 documents that we intend to use or may use with  
23 government witnesses in cross. And we want to be sure  
24 that as you are thinking about what we have offered,  
25 that you keep in mind that many of those may be used

1 solely for cross-examination purposes.

2 THE COURT: There are some, but if you want to  
3 use them, that's what they'll be used for. But the  
4 question I have is more basic: Do you want me only to  
5 give you rulings on exhibits that you intend to use in  
6 your direct case -- direct defense? I want -- I'll  
7 review all of them, but there are a number like that,  
8 and that aren't admissible unless on cross. There are a  
9 number of things that are appropriate for, perhaps,  
10 refreshing recollection, that sort of thing, but they're  
11 hearsay, for example.

12 MR. WAX: I think, Judge, that if there are  
13 some that you view as out of bounds for any purpose, it  
14 would certainly help us to know that.

15 THE COURT: I'll try to tell you, even if it's  
16 not a ruling upfront. There are a number of them, for  
17 example, that are hearsay, and that's only -- you know,  
18 you can only use that for certain limited purposes.

19 MR. WAX: We understand. And we also intend  
20 and believe that the rule of evidence permit us to use  
21 hearsay with experts. And I hope you'll keep that in  
22 mind as well in terms of some of the ones that are  
23 hearsay.

24 THE COURT: Within limits, though. Years ago I  
25 tried condemnation cases about scenic easements on the

1 Rogue River. And the expert witnesses when asked -- and  
2 the government's witness was a witness named Cap  
3 Vandagriff from Medford, and when asked how he came up  
4 with his opinion he said, I talked to other people on  
5 the river and asked them how much the view was worth to  
6 them on their property.

7 MR. WAX: I don't think we're going there, Your  
8 Honor. I think where we're going is where the Ninth  
9 Circuit just gave us some guidance in the *Stever* case in  
10 terms of exhibits.

11 THE COURT: I know you are. I'm just having a  
12 little fun.

13 MR. WAX: Well, I hear you, but I want my  
14 client to be sure that he understands where we're at  
15 here.

16 We also have a couple of witnesses we've  
17 identified as people we will be adding to a witness  
18 list, and we'll get that information out as well.

19 We, in the pleading portion of the lists, also  
20 pointed out that if we understand correctly what the  
21 government has provided to us in the nature of witness  
22 and exhibit lists is their direct case only. And if,  
23 indeed, that is what they've done and the court is going  
24 to, you know, permit that what I would call limited  
25 disclosure, I think that it is more than appropriate to

1 not hold us to provide material that is really crossing  
2 their case.

3 I think that it would be best in this situation  
4 if they provided us a full set of materials, because we  
5 have provided far more than I think the government has  
6 any right to under the law. And I just want to  
7 re-emphasize that.

8 THE COURT: I even remember the case that your  
9 office appealed my --

10 MR. WAX: And won.

11 THE COURT: -- requirement --

12 MR. WAX: And won.

13 THE COURT: And won. I still require it,  
14 though. Look at me.

15 MR. WAX: I know that. And, look, I did not  
16 object, Your Honor. And that's what I'm saying, I think  
17 we've done more than the law requires.

18 THE COURT: I don't really care what the Ninth  
19 Circuit says about that.

20 MR. WAX: Well, we do, Judge.

21 THE COURT: Well, then don't provide it. But  
22 as you know, it makes more sense to sometimes, whatever  
23 they say.

24 MR. WAX: So --

25 THE COURT: Congratulations on your win,



1 sincerely so.

2 MR. WAX: Thank you.

3 The difficult thing today, Judge, is  
4 Mr. Matasar and the condition of his wife.

5 THE COURT: Yes. I know that. Please take my  
6 best to their family.

7 MR. WAX: I will do that. I'm not sure that we  
8 can be able to try this case on June 7th. He has not  
9 worked now for a week. Today, while his wife is home,  
10 she is at physical and occupational therapists. I mean,  
11 there are a whole series of things that they're dealing  
12 with in terms of her condition, and she cannot at this  
13 point be left alone. He doesn't know, I don't know when  
14 he will be able to get back to full engagement in the  
15 case.

16 And the reality of our situation is that in the  
17 division of labor, you know, we're able to go forward  
18 today because I've been focusing on the, you know,  
19 non-accounting aspects of the case. He's been focusing  
20 on the accounting portion. And meetings that were  
21 scheduled last week and this week with two of our  
22 accounting experts unfortunately had to be cancelled,  
23 and we don't know when they will be rescheduled. Given  
24 the --

25 THE COURT: We're going to hold the schedule

1 for right now. We have a month left, and we'll follow  
2 it. A lot of work has been done. And there is some  
3 things we can't do anything about, of course. And I  
4 hope that whatever I do will be humane, along with  
5 right.

6 MR. WAX: Well, we hope so, too, Your Honor.  
7 At this point I just want everyone to be aware that  
8 while we are, to the extent we can, going forward for  
9 June 7th, I am very concerned that it's just not going  
10 to be possible for us. And we will get back to you  
11 perhaps toward the end of the week when the Matasars  
12 have a clearer picture of the progress, you know, that's  
13 made this week, and what the next couple of weeks look  
14 like.

15 I am trying to remember what the next time we  
16 are scheduled to be back in court dealing with any  
17 pretrial matters is, if we have anything. We have  
18 nothing currently on?

19 THE CLERK: (Indicating.)

20 MR. WAX: Well, you know, we submitted a series  
21 of voir dire motions on Friday. We hope to get a  
22 proposed questionnaire to you tomorrow. And at the  
23 latest, that will be on Wednesday.

24 We have attempted to put together a factual  
25 argument as to why a questionnaire and a more than

1 usually intensive voir dire is needed in this case. We  
2 hope you look on that with some favor. And if so, think  
3 that it would be important to have at least some phone  
4 discussions about that so that if you are going to  
5 permit a questionnaire, that can take place getting out  
6 to the venire and getting the information back in plenty  
7 of time for us to actually do something with the  
8 information.

9 THE COURT: I'll give you a ruling on those  
10 motions long before trial.

11 MR. WAX: And, you know, you've seen that we  
12 have in addition to the big motions dealing with the  
13 evidence, we filed a couple of supplementals, and --

14 THE COURT: I read them this weekend.

15 MR. WAX: -- we -- I don't want to say eagerly  
16 await, but we await your rulings.

17 THE COURT: You'll get them soon. I have some  
18 ideas about them already.

19 MR. WAX: If I can have a moment with my  
20 colleagues who are filling in for Mr. Matasar.

21 THE COURT: You may.

22 MR. WAX: See if they can channel him to me.

23 THE COURT: Of course. No one can channel  
24 Larry Matasar.

25 (Discussion held off the record.)

1           MR. WAX: We will, Judge, be filing another  
2 motion in a day or two similar to that which we've been  
3 filing with respect to some of the exhibits, and it will  
4 be requesting that you hold a hearing in advance of the  
5 trial on any statements that the government seeks to  
6 offer as statements of coconspirators under the  
7 coconspirator exception to the hearsay rule. And you  
8 have pending our renewed requests with respect to  
9 coconspirators.

10           I think that what we have seen in the  
11 government's recent pleadings puts that issue into  
12 higher relief and makes it clear that we're all  
13 operating at this point in the dark to a certain extent  
14 about who or what the government views as the scope of  
15 the conspiracy. And we certainly shouldn't be put in a  
16 position in which we might call a witness the government  
17 views as a coconspirator and we don't have any idea  
18 about that.

19           So that if there are people believed by the  
20 government and identified by the grand jury as  
21 unindicted coconspirators, I think we need to know that,  
22 and I think you need to do that so that you can make  
23 rulings in advance of trial as to whether or not the  
24 coconspirator rules would apply and render any  
25 statements that the government seeks to offer as

1     admissible.

2             THE COURT:   Well, we have two experienced  
3     prosecutors.   They are aware of the rules in that  
4     regard.

5             MR. GORDER:   Thank you, Your Honor.   We have a  
6     couple of issues we wanted to bring up.   On my behalf,  
7     I'm told -- I was told late last week that there is a  
8     letter on the way to me from the Prosecuting General's  
9     Office in Russia about the proposed testimony of the FSB  
10    officer that we've listed as our witness.   And my  
11    understanding is the Russians are putting some  
12    conditions on his testimony.   But I haven't gotten the  
13    letter, so -- and I'm actually -- I at least have a  
14    tentative appointment at the Russian Embassy in  
15    Washington later this week to discuss their conditions.

16            So I wanted to alert the court and counsel that  
17    the FSB officer may not ultimately testify.   So I  
18    wouldn't spend a lot of time worrying about his exhibits  
19    right now.

20            If that situation changes, we'll let everyone  
21    know.   But at least if I understand the letter  
22    correctly, we probably would not be calling him as a  
23    trial witness, so -- but I haven't seen it.   So that is  
24    part of the nature of dealing with foreign governments.

25            THE COURT:   Among those facts that don't

1 matter, the former head of the Prosecutors in Russia was  
2 at a seminar I was the resource person for on a boat  
3 down the Volga River, and the important thing is his  
4 name was Evgenii, so he shared the same name as our  
5 little community here.

6 MR. GORDER: I'm not sure whether my letter is  
7 coming from him or not, Your Honor.

8 THE COURT: It's not. He's doing something  
9 else now.

10 MR. GORDER: Okay. And then Mr. Cardani had a  
11 few items.

12 MR. CARDANI: There are a couple of exhibits,  
13 Judge, that we've notified counsel that are in the  
14 process of being finalized. The Jeremy Christian (sic)  
15 report is just a report that we're going to offer as a  
16 summary for the jury to show which hard drives each of  
17 our exhibits came from, and then we'll depict that on a  
18 floor plan of al-Haramain's Ashland setting.

19 THE COURT: You'll show that to Mr. Wax?

20 MR. CARDANI: Yes, we will, yes. The Al Rajhi  
21 Bank records, there has been a lot of back and forth on  
22 that. We're told out of Washington that there is a  
23 possibility that we'll get those in a format for  
24 publication to the jury. I just want you -- we've put  
25 it on our exhibit list. We'll provide counsel with

1 immediate notification if we get those things. But for  
2 now, we'll put that on the exhibit list in hopes that  
3 we're going to be able to get that.

4           The AHIF exhibits, the series of exhibits -- I  
5 talked to you about this at our list hearing, we were  
6 hopeful the last time we met that we were going to meet  
7 with the defense and come to some stipulations on the  
8 foundational aspects of the exhibits that we have that  
9 start with the prefix AHIF, and there are about 12 of  
10 them.

11           I thought we were making progress on that and I  
12 held off filing a motion on that. But I'm ready to --  
13 I'm within a day or two of being able to file that  
14 motion. If we're not able to reach the stipulations  
15 necessary, then we're going to need some rulings from  
16 the court because on a couple of exhibits, we need some  
17 more information. And unless there is some agreements  
18 from the defense, then the information -- for example,  
19 where Mr. Matasar got certain of the documents that he  
20 gave us in response to the subpoena. He acted as a  
21 vehicle in delivering those records.

22           THE COURT: Let me just ask this: You need to  
23 take your counsel on whether you file a motion, but what  
24 I'd like you and the defense to discuss, though, in  
25 addition to that, whether I would rule that Mr. Matasar

1 would have to testify or not is whether that can happen  
2 in a proceeding before we seat a jury, so that we can --  
3 if we have to do it, do it in that way.

4 MR. CARDANI: And I thought we were making some  
5 progress on that, Judge, that would obviate any of this,  
6 but we're just not there. I'll have a conversation with  
7 Mr. Wax about this, hopefully before the end of the day  
8 to see if we can do that and not have -- they make a  
9 point that Mr. Matasar is not a true custodian of  
10 records in the business to set the proper foundation for  
11 business records under 803(6). That's well taken. And  
12 I understand that.

13 But if we are not relying on that, but we're  
14 relying on the fact that it's an admission of  
15 al-Haramain's, this is a document that came out of the  
16 premises. It is relevant -- highly relevant and came  
17 from a highly reliable source, the jury is entitled to  
18 know that information. And the court is entitled to  
19 know that information when ruling on the admissibility  
20 of it.

21 Because we gave Mr. Matasar the professional  
22 courtesy of not having to show up at the grand jury or  
23 have a custodian, a true custodian appear, when those  
24 records were given to us long ago, we are going to need  
25 some more information on that. And I'm hopeful that we



1 can do that agreeably, but we may not be.

2 THE COURT: Okay.

3 MR. CARDANI: The trial schedule, just -- the  
4 court has heard this over and over again, but we are all  
5 very sensitive to Mr. Matasar's personal situation, and  
6 I think that goes without stating. But we would be  
7 remiss if we didn't do all we could to hold the line on  
8 the trial date. This case --

9 THE COURT: You don't need to say any more  
10 about that. I'm going to do my very best to have the  
11 trial as it's currently set.

12 MR. CARDANI: That's all I have.

13 THE COURT: Anything further?

14 MR. WAX: No, thank you.

15 THE COURT: Yes. Gentlemen and ladies, thank  
16 you very much. We're in recess.

17 (The proceedings were concluded at 3:06 p.m.)  
18  
19  
20  
21  
22  
23  
24  
25

## 1 CERTIFICATE

2 I, Deborah Wilhelm, Certified Shorthand Reporter  
3 for the State of Oregon, do hereby certify that I was  
4 present at and reported in machine shorthand the oral  
5 proceedings had in the above-entitled matter. I hereby  
6 certify that the foregoing is a true and correct  
7 transcript, to the best of my skill and ability, dated  
8 this 14th day of May, 2010.

9  
10  
11  
12 /s/ Deborah Wilhelm

13 \_\_\_\_\_  
14 Deborah Wilhelm, RPR  
15 Certified Shorthand Reporter  
16 Certificate No. 00-0363  
17  
18  
19  
20  
21  
22  
23  
24  
25